



**TESTIMONY OF LOREN L. TIMMERMAN
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GREAT FALLS, MONTANA**

ON

**SECURING THE NORTHERN BORDER: VIEWS
FROM THE FRONT LINES**

BEFORE THE

**COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
U. S. SENATE
FIELD HEARING
HAVRE, MONTANA**

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Mr. Chairman and members of the Senate Homeland Security and Governmental Affairs Committee, I would like to thank you for the opportunity to testify before you today on border security issues at the northern border ports of entry that I represent. I am President of National Treasury Employees Union (NTEU) Chapter 231 headquartered in Great Falls, Montana. I have the honor of representing U.S. Customs and Border Protection (CBP) personnel including CBP Officers, CBP Agriculture Specialists, and CBP trade compliance specialists at 13 land ports of entry in Montana and Idaho and 4 air ports of entry in Kalispell and Butte, Montana, Salt Lake City, Utah, and Denver, Colorado; and the pre-clearance facilities at the airports in Calgary and Edmonton, Alberta, Canada. NTEU is the elected representative of 22,000 Customs and Border Protection (CBP) employees at the Department of Homeland Security.

I have been employed by the former U.S. Customs Service as a Customs inspector beginning in March 2002. I have served at the land port of Sweet Grass, Montana since 2002. In 2002, Congress passed the Homeland Security Act that created the Department of Homeland Security (DHS). DHS merged former immigration and customs inspectors, canine enforcement officers and agriculture specialists into the Bureau of Customs and Border Protection (CBP) on March 1, 2003. CBP was given the dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade and travel.

Each year, 45 million vehicles cross into the United States from Canada. At the Port of Sweet Grass, there are 550,000 passenger vehicles and 225,000 pedestrian crossings each year from Canada. And every day, more than 300 commercial vehicles cross the border at Sweet Grass. There are also two freight railroad crossings at Sweet Grass and Eastport.

All these facilities are staffed by CBP Officers and CBP Agriculture Specialists represented by NTEU. I do not have to tell this audience that there are severe staffing shortages on our northern border. For years, NTEU has been saying that CBP needs several thousand additional officers at its ports of entry; that insufficient staffing and scheduling abuses are contributing to morale problems, fatigue, and safety issues for CBP Officers and CBP Agriculture Specialists.

CHALLENGES AT THE NORTHERN BORDER PORTS OF ENTRY

The first challenge is the lack of resources and training to do our jobs effectively. In the past, there were three inspectors in secondary processing for every one inspector in primary processing. Now there is a one to one ratio. This has resulted in a dramatic reduction in the number of illegal cargo seizures. For example, at the Port of Sweet Grass, from 2000 through 2007, there has been a 59% reduction in the number of seizures of illegal drugs, hazardous imports and other contraband.

Before the merger, an inspector would check documents, query the traveler and send to secondary any vehicles or persons that needed additional vetting by an inspector. At secondary, a thorough document check or vehicle search would take place.

It is important to note that Ahmed Ressam, the millennium bomber, had a valid passport when he attempted to enter the U.S. from Canada by ferry at Port Angeles, Washington. It was years of experience that now-retired U.S. Customs agent Diana Dean, after brief questioning at primary, sent Ressam to secondary where the true purpose of his visit to the U.S. was discovered. Without adequate personnel at secondary, wait times back up and searches are not done to specifications. For example, a full search of one vehicle for counterfeit currency will take two officers on average a minimum of 45 minutes. Frequently, only one CBPO is available for this type of search and this type of search will then take well over an hour.

Technological advances are important, but without the training and experience, technology alone would have failed to stop the millennium bomber at Port Angeles. Today, primary processing is increasingly dependent on technology. CBPOs are instructed to clear vehicles within thirty seconds. That is just enough time to run the license through the plate reader and check identifications on a data base. If the documents are in order the vehicle is waived through. The majority of a CBPO's time is spent processing I-94s, documents non-resident aliens need to enter the U.S. At each shift change, it takes 5 minutes to sign on to these computers. During that sign-on time, so that lanes are not backed up at the booths, CBPOs are under extreme pressure to process visitors without technological support – in other words fly blind.

ONE FACE AT THE BORDER INITIATIVE

The Department of Homeland Security (DHS) brought together employees from three separate departments of government--Treasury, Justice and Agriculture--when it created US. Customs and Border Protection in March 2003. And on September 2, 2003, CBP announced the "One Face at the Border" initiative. This initiative was designed to eliminate the pre-9/11 separation of immigration, customs, and agriculture functions at US land, sea and air ports of entry. Inside CBP, two different inspector occupations--Customs Inspector and Immigration Inspector were combined into a single inspectional position--the CBP Officer.

The priority mission of the CBP Officer is to prevent terrorists and terrorist weapons from entering the U.S., while simultaneously facilitating legitimate trade and travel, as well as upholding the laws and performing the traditional missions of the three legacy agencies, the U.S. Customs Service, the Immigration and Naturalization Service (INS) and the Animal, Plant and Health Inspection Service. Even though Agriculture Specialists were not melded into CBP Officer position description, their agriculture quality inspection duties were significantly affected by the merger.

In practice, the major reorganization of the roles and responsibilities of the inspectional workforce as a result of the One Face at the Border initiative has resulted in the dilution of the customs, immigration and agriculture inspection specializations and in weakening the quality of passenger and cargo inspections.

According to CBP, "there will be no extra cost to taxpayers. CBP plans to manage this initiative within existing resources. The ability to combine these three inspectional disciplines and to cross-train frontline officers will allow CBP to more easily handle projected workload

increases and stay within present budgeted levels." (See CBP's "One Face at the Border" Questions and Answers dated 9/15/03.)

This has not been the case. The knowledge and skills required to perform the expanded inspectional tasks under the One Face at the Border initiative, along with staffing shortages at the ports, have increased the workload of the CBP Officer and the CBP Agriculture Specialist.

As a consequence of the One Face at the Border policy and CBP staffing shortages, an egregious and dangerous situation occurs regularly at the ports that I represent. Unarmed CBP Agriculture Specialists are regularly assigned to partner with an armed CBP Officer operating the VACIS lanes. In the past, VACIS lanes were staffed by two armed CBP Officers. It is not the mission of CBP Agriculture Specialists to staff VACIS lanes and because they are unarmed, both CBP Officers and CBP Agriculture Specialists are unnecessarily put in a dangerous situation.

GAO REPORT

In 2006, Congress requested that the Government Accountability Office (GAO) evaluate the One Face at the Border initiative and its impact on legacy customs, immigration and agricultural inspection and workload. GAO conducted its audit from August 2006 through September 2007 and issued its public report, Border Security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation's Ports of Entry (GAO-08-219), on November 5, 2007. The conclusions of this report echo what NTEU has been saying for years:

- CBP needs several thousand additional CBP Officers and Agriculture Specialists at its ports of entry.
- Not having sufficient staff contributes to morale problems, fatigue, and safety issues for CBP Officers.
- Staffing challenges force ports to choose between port operations and providing training.
- CBP's onboard staffing level is below budgeted levels, partly due to high attrition, with ports of entry losing officers faster than they can hire replacements.
- One reason for high attrition is that CBP Officers leave to take positions in other federal agencies with law enforcement officer retirement not provided to them at CBP. (Congress enacted legislation to grant CBP Officers this benefit beginning July 2008.)

There are also a large number of CBP Officer vacancies in Chapter 231 and throughout the U.S. and the ratio of CBP supervisors to staff has increased dramatically. In the 1990s, the goal was one supervisor to every 15 inspectors. Today at Sweet Grass, there is one supervisor for every 6 CBP Officers. This ratio puts increased scheduling pressure on rank and file frontline officers.

Land Ports of Entry:

Most travelers enter the U.S. through the nation's 166 land border ports of entry (13 in Montana and Idaho). About two-thirds of travelers are foreign nationals and about one-third are returning U.S. citizens. The vast majority arrive by vehicle. The purpose of the primary inspection process is to determine if the person is a U.S. citizen or alien, and if alien, whether the alien is entitled to enter the U.S. In general, CBP Officers are to question travelers about their nationality and purpose of their visit, whether they have anything to declare, and review any travel documents the traveler may be required to present.

At the land ports, primary inspections are expected to be conducted in less than one minute. Travelers routinely spend about 45 seconds at Montana crossings during which CBP Officers have to assess documents and oral claims of citizenship.

Currently, there are thousands of documents that travelers present to CBP Officers when attempting to enter the United States, creating a tremendous potential for fraud. In addition, it takes several minutes for CBP Officers to perform shift changes at the land ports of entry. The delay is primarily due to restarting the inspection booth computer with a new operator. This situation is exacerbated by random computer generated operations and enforcement referrals to secondary inspection areas. Rebooting the computer by the new CBP Officer takes on average three to five minutes. Lines back up during shift changes and CBP Officers are under pressure by managers to clear these lanes quickly.

Air Ports of Entry:

At the airports, CBP Officers are expected to clear international passengers within 45 minutes. Prior to 9/11, there was a law on the books requiring INS to process incoming international passengers within 45 minutes. The Enhanced Border Security and Visa Protection Act of 2002 repealed the 45 minute standard, however, it added a provision specifying that staffing levels estimated by CBP in workforce models be based upon the goal of providing immigration services within 45 minutes. According to GAO, "the number of CBP staff available to perform primary inspections is also a primary factor that affects wait times at airports." (See GAO-05-663, page 12.) Recently, the U.S. Travel and Tourism industry has called for a further reduction in passenger clearance time to 30 minutes.

Staffing shortages have also diminished the quality of secondary inspections. In the past, there were two or more inspectors in secondary processing for every one inspector in primary processing. Now there is a one to one ratio. Before the merger, an inspector would check documents, query the traveler and send to secondary any vehicles or persons that needed additional vetting by an inspector. At secondary, a thorough document check or vehicle search would take place. Without adequate personnel at secondary, wait times increase and searches are not done to specifications and officer safety is jeopardized. At the Salt Lake City Airport, for example, only one CBP Officer is assigned to secondary inspection and is totally alone without even a second officer within viewing site of the secondary inspection room.

IMPACT OF STAFFING SHORTAGES

According to GAO, "At seven of the eight major ports we visited, officers and managers told us that not having sufficient staff contributes to morale problems, fatigue, lack of backup support and safety issues when officers inspect travelers--increasing the potential that terrorists, inadmissible travelers and illicit goods could enter the country." (See GAO-08-219, page 7.)

"Due to staffing shortages, ports of entry rely on overtime to accomplish their inspection responsibilities. Double shifts can result in officer fatigue...officer fatigue caused by excessive overtime negatively affected inspections at ports of entry. On occasion, officers said they are called upon to work 16-hour shifts, spending long stints in primary passenger processing lanes in order to keep lanes open, in part to minimize traveler wait times. Further evidence of fatigue came from officers who said that CBP officers call in sick due to exhaustion, in part to avoid mandatory overtime, which in turn exacerbates the staffing challenges faced by the ports." (See GAO-08-219, page 33.)

There are also continuing efforts to limit overtime at the ports of entry represented by Chapter 231. At times, there are only three CBP Officers working passenger operations. Our lobby at Sweet Grass and other ports will have 20 to 30 people waiting on one or two officers to process a simple document that should only take minutes.

Also, overtime has been eliminated for canine duties. Dogs work regular time only. Canine handlers do fill in for overtime duty but without their dogs. There are some shifts and sometimes whole days where there are no drug or bomb dog teams working. At the land ports of Montana and Idaho, there is the barest minimum of canine coverage and these ports are only serviced by a drug dog. There are no bomb dogs or agriculture dogs servicing these land ports.

ADDRESSING STAFFING SHORTAGES

In order to assess CBP Officer staffing needs, Congress, in its FY 07 DHS appropriations conference report, directed CBP to submit by January 23, 2007 a resource allocation model for current and future year staffing requirements.

In July 2007, CBP provided GAO with the results of the staffing model. "The model's results showed that CBP would need up to several thousand additional CBP officers and agricultural specialists at its ports of entry." (See GAO-08-219, page 31.)

I am not privy to the actual number of CBP Officers on staff today or the optimal staffing number as stated in CBP's own Staffing Allocation Model for the ports of entry represented by Chapter 231 because CBP has deemed this information to be "law enforcement sensitive."

According to GAO, with the merger of the three agencies' inspection forces, there are now approximately 18,000 CBP Officers currently employed by CBP. NTEU believes that at least 22,000 CBP Officers would be needed to have a robust and fully staffed force at our ports of entry. I urge the Committee to review CBP's Staffing Allocation Model for the optimal staffing numbers for all 327 ports of entry and to authorize the hiring necessary for CBP to achieve this level of staffing.

The President's FY 2009 budget proposal funds an additional 2200 Border Patrol agent new hires. But, for salaries and expenses for Border Security, Inspection and Trade Facilitation at the 327 ports of entry, the President's funding request is woefully inadequate, adding only 539 CBP Officer new hires. NTEU is grateful that the House Appropriations Committee included funding for a net increase of 850 CBP Officers at the land ports, 173 CBP Officers at the air ports of entry and 100 additional CBP Agriculture Specialists in its FY 2009 DHS Appropriations bill. The Senate Appropriations Committee included 143 additional CBP Officer, but no CBP Agriculture Specialists new hires in the Senate FY 2009 Appropriations bill.

NTEU believes that if the Chapter 231 ports of entry were staffed at the number stated in CBP's own Staffing Allocation Model, all lanes at all port crossings could be opened to capacity, while managing for contingencies, as well as allowing CBP Officers' time for mandated training.

CBP Agriculture Specialists:

NTEU was certified as the labor union representative of CBP Agriculture Specialists in May 2007 as the result of an election to represent all CBP employees, other than Border Patrol agents, that had been consolidated into one bargaining unit by merging the port of entry inspection functions of Customs, INS and the Animal, Plant and Health Inspection Service as part of DHS' One Face at the Border initiative.

According to GAO (GAO-08-219, page 31), CBP's staffing model "showed that CBP would need up to several thousand additional CBP Officers and agriculture specialists at its ports of entry." And GAO testimony issued on October 3, 2007 stated that, "as of mid-August 2007, CBP had 2,116 agriculture specialists on staff, compared with 3,154 specialists needed, according to staffing model." (See GAO-08-96T page 1.) NTEU recommends that CBP hire additional CBP Agriculture Specialists to comply with its own staffing model.

In addition, NTEU recommends that CBP Agriculture Specialists have access to voluntary overtime opportunities to the same extent as CBP Officers. Agriculture Specialists did not have an overtime cap before joining CBP. Many now say they are not given adequate voluntary overtime opportunities.

At the Montana and Idaho ports, CBP Agriculture Specialists report that the amount of agriculture quality inspections have been reduced as well as interceptions, while their non-agriculture duties have been greatly expanded. NTEU also recommends that Congress, through oversight and statutory language, make clear that the agricultural inspection mission is a priority and require DHS to report to them on how it is following U.S. Department of Agriculture

procedures on agriculture inspections. The report should include wait times for clearing agricultural products and what measures could be implemented to shorten those wait times.

TRAINING AND INFRASTRUCTURE ISSUES

The Homeland Security Appropriations Committee added report language to the FY 2007 DHS Appropriations bill that, with regard to CBP's One Face at the Border initiative, directs "CBP to ensure that all personnel assigned to primary and secondary inspection duties at ports of entry have received adequate training in all relevant inspection functions." It is my understanding that CBP has not reported to DHS Appropriators pursuant to this language, but NTEU's CBP members have told us that CBP Officer cross-training and on-the-job training is woefully inadequate. In addition, staffing shortages force managers to choose between performing port operations and providing training. In these instances, it is training that is sacrificed.

GAO reports extensively in GAO-08-219, pages 35-41, on the shortcomings with CBP's on-the-job and cross training programs and I urge you to review this information. I also urge you to review NTEU testimony on CBP training issues delivered before the House Homeland Security Subcommittee on Management, Integration and Oversight on June 19, 2007. In Montana, according to NTEU members, there are no meaningful training programs--CBP Officers are regularly told to complete two-hour training courses in 30 minutes.

There are also several infrastructure problems faced by CBP employees operating at the land ports of Montana and Idaho. There is a significant lack of housing for CBP Officers and CBP Agriculture Specialists assigned to the Port of Sweet Grass. In addition, Chapter 231 CBP personnel travel many miles on hazardous roads to get to their duty ports and now must pay much more in commuting expenses because of the rise in gasoline prices.

A health concern has recently come to my attention due to inadequate infrastructure. At the Port of Peigan facility, there has been excessive mold growth due to basement flooding.

RECRUITMENT AND RETENTION ISSUES

Job Satisfaction, Leadership and Workplace Performance Survey:

In February of 2007, DHS received the lowest scores of any federal agency on a survey for job satisfaction, leadership and workplace performance. Of the 36 agencies surveyed, DHS ranked 36th on job satisfaction, 35th on leadership and knowledge management, 36th on results-oriented performance culture, and 33rd on talent management. Widespread dissatisfaction with DHS management and leadership creates a morale problem that affects recruitment and retention and the ability of the agency to accomplish its mission. These results were repeated in a DHS employee survey that the agency released in April of this year.

Work Shift Schedule Abuse:

Reported staffing shortages are exacerbated by challenges in retaining staff, contributing to an increasing number of vacant positions nationwide. "CBP's onboard staffing level is below

its budgeted level....the gap between the budgeted staffing levels and the number of officers onboard is attributable in part to high attrition, with ports of entry losing officers faster than they can hire replacements. Through March 2007, CBP data shows that, on average, 52 CBP Officers left the agency each 2-week pay period in fiscal 2007, up from 34 officers in fiscal year 2005." (See GAO-08-2 19, page 34.)

Another major factor that has hindered the recruitment and retention of CBP Officers and CBP Agriculture Specialists is work shift determinations. In the past, the agency had the ability to determine what the shift hours will be at a particular port of entry, the number of people on the shift, and the job qualifications of the personnel on that shift. The union representing the employees had the ability to negotiate with the agency, once the shift specifications were determined, as to which eligible employees would work which shift. This was determined by such criteria as seniority, expertise, volunteers, or a number of other factors.

CBP Officers around the country have overwhelmingly supported this method for determining their work schedules for a number of reasons. One, it provides employees with a transparent and credible system for determining how they will be chosen for a shift. They may not like management's decision that they have to work the midnight shift but the process is credible and both sides can agree to its implementation. Two, it takes into consideration lifestyle issues of individual officers, such as single parents with day care needs, employees taking care of sick family members or officers who prefer to work night shifts. CBP's unilateral elimination of employee input into this type of routine workplace decision-making has had probably the most negative impact on employee morale.

On November 13, 2007, NTEU won an arbitration decision that found that CBP had not been abiding by existing federal laws that require employees to receive one week notice of their work shifts; be scheduled so they receive two consecutive days off; and have schedules that provide for uniform daily work hours for each day of the week.

To cut down on overtime, Sweet Grass port managers frequently schedule CBP Officers to staggered work shifts that preclude car pooling and overtime opportunities, creating an undue financial burden on the employee. For example, one CBP Officer will be scheduled to a 10 am to 6 pm work shift for a pay period, while another CBP Officer at the same port will not start until noon for their 8 hour shift. Sometimes, schedules are altered with no notice, making it impossible for CBP Officers to have any certainty in planning personal and family activities during off-duty hours.

These abuses have resulted in CBP Officers leaving the service. NTEU hopes that this arbitration win and returning some normalcy back to CBP Officer work schedules will reduce this trend. Unfortunately, it is likely that CBP will appeal the arbitrator's ruling, further delaying resolution of this ongoing problem at all 327 ports of entry.

Law Enforcement Officer Status:

CBP Officers clearly deserve Law Enforcement Officer (LEO) status and Congress in the recently passed FY 2008 omnibus spending bill recognized this by providing a prospective LEO

retirement benefit to CBP Officers beginning in July 6, 2008. All too often, talented young officers treated the CBP Officer position as a stepping-stone to other law enforcement agencies with more generous retirement benefits. With the enactment of Section 535 of the FY 2008 omnibus spending bill, this will no longer be the case. NTEU is grateful to the Homeland Security and Governmental Affairs Committee for its leadership in achieving the enactment of this provision for CBP Officers.

CBP Officer and CBP Agriculture Specialists Journeyman Pay:

Another recruitment and retention incentive that Congress should immediately address is increasing the basic rate of pay to GS-12 of the General Schedule for CBP Officers and CBP Agriculture Specialists. For years, the journey level pay for CBP positions has remained at GS-11, even though their duties have significantly expanded.

DHS Human Resources System:

In July 2005, the U.S. District Court for the District of Columbia ruled that portions of the proposed DHS personnel regulations, formerly known as MaxHR, but now called the Human Capital Operations Plan (HCOP), infringed on employees' collective bargaining rights, failed to provide an independent third-party review of labor-management disputes and lacked a fair process to resolve appeals of adverse management actions. The Appellate Court rejected DHS' appeal of this District Court decision and DHS declined to appeal the ruling to the Supreme Court.

When Congress passed the Homeland Security Act in 2002, it granted the new department very broad discretion to create new personnel rules. It basically said that DHS could come up with new systems as long as employees were treated fairly and continued to be able to organize and bargain collectively. The regulations DHS came up with were subsequently found by the Courts to not even comply with these two very minimal and basic requirements.

It has become clear to the Congress that DHS has learned little from these Court losses and repeated survey results and will continue to overreach in its attempts to implement the personnel provisions included in the Homeland Security Act of 2002. In May 2007, the full House approved H.R. 1648, the FY 2008 DHS Authorization bill that includes a provision that repeals Title 5, Chapter 97, the DHS Human Resources Management System. NTEU requests that the Committee adopt the same language and repeal Title 5, Chapter 97.

Additional Morale Issues

DHS employees deserve more resources, training and technology to perform their jobs better and more efficiently. DHS employees also deserve personnel policies that are fair.

Awards: Up until 2005, CBP management and NTEU members jointly nominated employees to receive yearly cash awards. Not only the names of the employees that received awards were made public, but also the reason for the employee's award and the amount of the award was public. In 2005, CBP scrapped this award policy and unilaterally implemented its own awards

system. Under the new CBP awards program, there is no transparency whatsoever. Some employees were even told to keep their awards secret. Now CBP employees that receive a cash award are told not to reveal that they a) won an award; b) the reason why they won the award; or c) the amount of the award. As you can imagine, an open and transparent awards process has become a spoils system for management.

Grooming Standards: CBP unilaterally imposed new personal grooming standards that severely limit the amount of facial hair, the length and style of hair for both men and women, nail grooming, and the amount and type of jewelry. Despite two arbitration rulings that the new CBP grooming standards were an illegal employment practice in violation of law (one sustained by the Federal Labor Relations Administration (FLRA) the second still on appeal before the FLRA), CBP has stated that it will not comply with these decisions and the grooming standards remain in limbo.

Unequal Temporary Duty Opportunities: Temporary duty (TDY) opportunities are not available to the CBP employees that I represent. Because of staffing shortages, most of the ports in my area can't afford to send anyone on a TDY that may enhance an employee's career.

Paid Moves for GS-12 and Above Only: In the past, the moving costs for frontline employees who put in for transfers were paid for by the agency. Now the agency has eliminated this practice for the rank and file. Currently, if a CBP Officer for any reason seeks to transfer, it is at his own expense, whereas supervisors and management get their moves paid for.

These are just a few examples of how CBP continues to undermine the morale of men and women who everyday take up arms to protect our nation's ports of entry.

NTEU RECOMMENDATIONS

CBP employees represented by NTEU are capable and committed to the varied missions of DHS--from port security to the facilitation of trade and travel into and out of the United States. They are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. The American public expects its borders and ports to be properly defended. Congress must show the public that it is serious about protecting the homeland by:

- Filling vacancies and increasing CBP Officer and CBP Agriculture Specialist staffing to those levels in CBP's own staffing model;
- reestablishing specialization of prior inspectional functions;
- increasing CBP Officer and CBP Agriculture Specialist journeyman pay to GS-12;
- repealing the compromised DHS personnel system;
- allowing employee input in the shift assignment system; and
- allowing employee input on staffing levels for each shift.

Again, I would like to thank the committee for the opportunity to be here today on behalf of NTEU Chapter 231, CBP Great Falls, Montana.