

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION**

**STATEMENT OF KIP HAWLEY
ASSISTANT SECRETARY**

Before the

**UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA**

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Good morning Chairman Akaka and Ranking Member Voinovich. It is my honor to be here today to discuss the critical security mission of the Department of Homeland Security (DHS) and the Transportation Security Administration (TSA) and how that mission is supported by the flexible personnel authorities established by the Aviation and Transportation Security Act (ATSA), P.L. 107-71.

The tragic events of 9/11 signaled the need for a sea change in the way we protect our Nation's transportation systems. Congress responded with the enactment of ATSA, recognizing that "the safety and security of the civil air transportation system is critical to the security of the United States and its national defense, and that a safe and secure United States civil air transportation system is essential to the basic freedom of America to move in intrastate, interstate and international transportation."

Chief among the fundamental changes ATSA realized was the transformation of security functions at United States airports to a Federal government responsibility. The ATSA Conferees recognized that "in order to ensure that Federal screeners are able to provide the best security possible, the Secretary must be given wide latitude to determine the terms of employment of screeners." In passing ATSA, the Congress recognized that previously established personnel programs in other Federal Government agencies were not the appropriate model to follow in regard to transportation security. With this recognition, Congress in ATSA gave the TSA authority to utilize existing authority provided to the Federal Aviation Administration (FAA) to develop its personnel system, and the flexibility to design its own policies and procedures and not use the FAA's system, except for certain specific statutory requirements. Additionally, and most significantly, with respect to employees directly involved with airport security screening functions, TSA was given broad authority to employ, appoint, discipline, terminate, and fix the compensation, terms and conditions of employment, notwithstanding any other provision of law. We have used this authority effectively to its greatest potential to enhance security and support our workforce.

At its core, this debate is not about collective bargaining. It is about security. TSA's security strategy is based on flexible, random, and unpredictable methods. TSA has a nimble, adaptable workforce that can quickly adjust to meet and counter an emerging terrorist threat. Our Transportation Security Officers (TSOs) can respond to intelligence and retool security procedures within hours across the span of our vast national transportation system. TSA's flexible personnel management system makes this responsiveness possible. This same flexible system has allowed TSA to improve the work life of our TSOs through direct interface between senior management and our front-line workforce. Congress wisely foresaw that these human resources tools would be needed when TSA was created in the aftermath of 9/11, and this remains a sound decision today.

The Administration strongly opposes the elimination of these personnel management authorities. S. 4 includes provisions that would eliminate the flexibility given to TSA to perform its critical transportation security missions. Repeal of section 111(d) of ATSA, as proposed in S. 4, would compromise transportation security and substantially diminish the Secretary's flexibility to effectively manage the Department. For these reasons if the bill presented to the President includes these provisions related to TSA personnel management, the President's senior advisors would recommend that he veto the bill.

Security Must Be the Primary Concern

Securing our transportation system—including finding explosives and the people who seek to bring them aboard aircraft—is what we do. It is an enterprise that is not static and predictable, because the threat is not static and predictable. This means being able to attract top notch personnel, keep them, post them where they need to be when they need to be there, and institute new procedures and deploy new technology whenever and wherever necessary to counter emerging threats.

Existing authorities permit TSA to flexibly manage and deploy its workforce, including its TSO workforce, to do so. During Hurricane Katrina and after the United Kingdom (UK) air bombing plot was foiled, TSA changed the nature of employees' work—and even the location of their work—to quickly and effectively respond to these emergencies. For example, after the UK air bombing plot was discovered, TSOs employed new standard operating procedures within hours to deal with the new threat. This flexibility is key to how DHS, through TSA, protects Americans while they travel, both at home and abroad. S. 4's provisions to eliminate these authorities would significantly diminish TSA's ability to respond quickly to security threats and would ultimately reduce transportation security.

Collective bargaining with a third party on behalf of our TSOs would not provide the flexibility required to wage war against terrorism. The ability to maintain a flexible, agile workforce is at the core of the Department's strategy to secure transportation across the network. This, as well as ability to deploy and test new explosive detection technology, and allow TSOs to experiment with new pilot technologies, without impact and implementation bargaining, enables the direct link of people-technology-mission

performance necessary to stay ahead of threats. Any reduction of the ability of TSA to quickly and decisively shift resources in direct response to intelligence, *e.g.*, to focus on a specific airport or different mode of transportation based on flow of intelligence analysis when time is of essence, would diminish TSA's effectiveness and put the American public at greater risk.

Workers' Rights Are Well Protected Under the Current Flexible System

In exercising these authorities, TSA is committed to ensuring that employees are treated fairly, consistent with merit system principles. While not all of the statutory systems are mandated under the current system, TSA has, on its own initiative, put in place parallel systems to ensure that all TSA employees enjoy the same level of protection.

TSOs are afforded numerous avenues for resolution and review of the full range of workplace issues, including disciplinary actions and allegations of discrimination and whistleblowing. At the most basic level, TSA has provided avenues for employee input into overarching concerns of the workforce through such programs as its Model Workplace Program, the TSA Ombudsman, and National Advisory Councils (NACs). The NACs, which advise the Administrator on corporate issues in the field, have played an integral role in such matters as field validation of changes to standard operating procedures, initiatives to reduce on-the-job injuries, provision of retention bonuses, and the design of TSA's new career progression initiative. One NAC is the TSO Advisory Council, comprised of TSOs from 34 airports around the country who have points of contact reaching virtually every airport in the country. The TSO NAC has 10 separate committees covering issues such as safety, human capital, training, governance, technology, and other key matters. They have week-long quarterly meetings with TSA Executive Leadership, including the Assistant Secretary, in order to provide him with direct recommendations and feedback from our staff on the frontlines. TSA also provides an Integrated Conflict Management System (ICMS), which is a collaborative, integrated, employee engagement mechanism at airports to address workplace issues.

TSOs have whistleblower protections comparable to those of other DHS employees through a formal Memorandum of Understanding with the United States Office of Special Counsel signed in May 2002. The assertion that TSOs do not have whistleblower rights is unfounded.

TSOs can join a union and enjoy many benefits of union membership. Key among those benefits is the right to have a union representative appear on their behalf in many personnel proceedings, including Equal Employment Opportunity (EEO) and Disciplinary Review Board (DRB) proceedings. Currently, 1,300 TSOs have elected to join a union and have their union dues automatically deducted from their pay.

For the resolution of individual employee concerns, the TSA Office of Civil Rights and Liberties oversees the Alternative Resolution to Conflict (ARC) program. This program assists complainants and managers in resolving EEO disputes as close to the point of origin as possible, and fulfills statutory and regulatory requirements of providing an

effective Alternative Dispute Resolution (ADR) system for EEO complaints. In the ARC program, a neutral third party helps individuals in conflict transform their conflict from a negative, destructive interaction to a positive, constructive one, and eliminates the need for costly, time-consuming administrative processing and litigation.

The ARC program has contributed greatly to the decline of formal EEO complaints. From FY 2003 through FY 2006, the percentage of new EEO complaints has fallen by 53%. Formal EEO complaints by TSA employees and applicants for all of FY 2006 totaled 297, representing only 0.4 percent of the total TSA workforce. In FY 2005, the most recent year for which data is available, TSA had a lower rate of formal EEO complaints than Federal agencies comparable in size to TSA, such as the Department of Transportation and the Social Security Administration.

TSA's disciplinary system provides full due process rights to TSOs. Overall, the process is more efficient than that statutorily required for other Federal employees, enabling TSA to better support its security mission by quickly taking disciplinary action where necessary. And TSOs have the right to appeal adverse actions to TSA's DRB, which provides due process equivalent to that available through appeals to the Merit Systems Protection Board (MSPB).

TSA has begun a peer review system and will be expanding it to additional airports to provide another option for conflict management. In peer review, TSOs and managers sit together in panels to determine the appropriate resolution of grievances and employee misconduct allegations. Employees who opt to pursue this route would still have a right to appeal to the DRB in certain circumstances.

These programs were not required by law, but TSA has determined as a policy that these programs and protections should be established. TSA leadership views these programs as an integral part of its relationship with TSOs and does not intend to take action to weaken these programs. TSA's special flexibility is a positive, progressive tool that we have enthusiastically used to serve the special needs of our workforce. We intend to continue this forward momentum.

Removal of Flexibility Will Eliminate Successful TSA Personnel Initiatives

Removing flexibility will likely prevent or slow current innovative programs and others that we are exploring for future implementation. Through special pay and benefits programs we encourage skilled, motivated workers to come to TSA and to stay at TSA. The result is better security and better service to the traveling public and the Nation—exactly what Congress intended in enacting ATSA and what the American people expect.

Through these flexibilities we have been able to institute the only true pay-for-performance system in DHS, which is providing a great incentive for TSOs to continually perform at a high level. In 2006 we rolled out a comprehensive performance management system under which TSA is compensating its TSOs based upon their technical proficiency, training and development, customer service skills, teamwork,

professionalism, leadership, and daily fitness for duty. By rewarding the right skills and new skills, as well as higher proficiency levels, we are able to reinforce critical performance areas and develop new ones to support the ever-changing needs of security.

Another critical program introduced in 2006 is the TSO Career Progression initiative. TSA is committed to creating career track and advancement opportunities that will encourage not only quality performance, but also longevity among our TSOs. The program created new pay bands for TSOs and the opportunity to serve in advanced positions as Behavior Detection Officers, who execute TSA's Screening Passengers by Observation Technique (SPOT) Program, Bomb Appraisal Officers, and TSA-approved instructors, who provide a full range of required TSO training.

We have been able to offer retention bonuses to give further incentive to TSOs, something that would not be possible without the flexibilities this bill would eliminate. Furthermore, to attract and retain the part-time workforce we are starting to test provision of full health care benefits at the same cost to the TSO that is paid by full-time workers. This would also be impossible without our personnel management flexibilities. TSA is retaining more TSOs as evidenced by our declining attrition rates. Since 2004, we have reduced full-time voluntary attrition by 7.4 percent and part-time voluntary attrition by 33 percent.

TSA has also been exploring innovative ways to attract to TSO service a population that would otherwise not be motivated to join Federal service. Specifically, there is an untapped source of employees, who may not have the need for the full range of benefits statutorily required to be provided to most Federal workers. For example, mature, highly-skilled individuals who have retired from first careers may not be attracted by Federal retirement and health benefits. Others may already have health benefits through a spouse. Our flexible personnel management system would allow us to increase the pay we could offer to these individuals in lieu of these unwanted benefits.

Maintaining a healthy, able-bodied workforce is also critical to our mission. TSA has implemented a series of aggressive workplace safety initiatives at airports nationwide, including the provision of nurse case managers and the utilization of Optimization and Safety Teams to evaluate and create ergonomic work areas to reduce injuries from lifting and carrying heavy bags. These programs are supplemented with an automated injury claims filing process and speedy local investigations of injuries to quickly correct safety problems. Through these programs, from 2005 to 2006 TSA has reduced by more than half the average number of TSO days-out due to injury—from 45 to 20.5.

Results Speak for Themselves

Our current personnel management system has allowed us to create an environment in which TSOs are highly trained and highly motivated to perform and stay with TSA. TSA has substantially reduced turnover from pre-TSA levels, providing stability in the TSO workforce. The pre-9/11 turnover rate of 100 to 400 percent at some airports did not allow for the institutional knowledge and culture of service and security that TSA has

developed. Our studies have shown that the longer our TSOs stay on the job and gain practical experience, the more efficient and effective they become. We have worked hard to drive down the voluntary attrition number and we will continue to do so. This makes sense from both a security and a management standpoint. TSA's voluntary attrition rate in fiscal year 2006 was 16.5 percent, which is less than the rate for comparable jobs in the private sector, and attrition rates have fallen every year since TSA's creation.

Conclusion

At the end of the day, this issue is not about collective bargaining. It is about having a human resources system that provides for a flexible, agile workforce that can rapidly deploy and respond throughout our transportation system to counter the terrorist threat. TSA has demonstrated over and over that the current system provides those flexibilities, and at the same time allows TSA to enhance the work life of our TSOs. This is not the time to interrupt our forward progress by extinguishing the special flexibilities Congress so wisely established in the wake of the 9/11 tragedy.

Thank you, again, for allowing me the opportunity to appear today. I will be happy to answer any questions you may have.