

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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August 5, 2005

Mr. Richard A. Hertling
Deputy Assistant Attorney General
Office of Legal Policy
4234 Robert F. Kennedy Building
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Re: Employment Screening for Criminal Records; Attorney General
Recommendations to Congress (OLP No. 100)

Dear Mr. Hertling:

This letter is in response to the Attorney General's request for comments regarding the future recommendations by the Department of Justice to Congress concerning federal procedures on criminal background checks and employment. 70 Fed. Reg. 32849, June 6, 2005. These comments are submitted on behalf of the International Brotherhood of Teamsters ("IBT"), its more than 500 affiliated Local Unions and its more than 1.3 million members. These comments are specific to the Teamsters and express our views and recommendations regarding the use of criminal background checks for employment purposes.

According to Section 6403 of the Intelligence Reform and Terrorism Prevention Act, Pub. L. 108-458, 118 Stat. 3638, 3758-60 (2004), the Attorney General has been charged with making recommendations to Congress concerning the best practices and procedures for conducting criminal background checks for non-criminal purposes such as in the hiring and employment of various categories of workers. The Attorney General has further been instructed to consult with representatives of various groups including labor. As far as the IBT is aware, no one from the Justice Department has requested to meet with any representatives from organized

Mr. Richard A. Hertling
August 5, 2005
Page 2 of 6

labor. Therefore, we are submitting these comments to provide the Department with our views, concerns and recommendations on this extremely broad issue. Because this issue is so very broad, the IBT welcomes the opportunity to discuss these issues with the Department in more detail at a later date.

The IBT recognizes the need for employment screening in some sectors such as those dealing with homeland security, childcare, eldercare and in medical facilities. However, the need must be balanced with employee rights and protections. Our members are hardworking individuals whose major concern is to work and provide for themselves and their families. Some of our members may have pasts that are less than stellar, but this does not mean that they are not qualified for their jobs, are a security risk, or that they should not have the opportunity to be productive members of society. Therefore, any increase in the use of criminal background checks for non-criminal reasons must be balanced with civil rights, privacy concerns and basic employee protections.

Below are several areas of concern to the IBT and recommendations for the Attorney General to consider:

1. Establishment of a Responsible Agency

If the Department allows increased access to criminal records, an Agency of the federal government must be charged with administering the system. For example the Transportation Security Administration is responsible for handling hazmat endorsements for truck drivers. The Agency handles all administration including waivers, appeals and certification. In order for the recommendation outlined below to work, employers and employees must be able to contact one Agency or Department that provides information, makes determinations on which disqualifying offenses are relevant to specific jobs, and affords parties an appeals process.

2. List of Disqualifying Crimes Should Relate to the Job

Any list of disqualifying offenses should have relevance to the job performed. For example, while writing bad checks may be a cause of

Mr. Richard A. Hertling

August 5, 2005

Page 3 of 6

concern for employers in the banking industry, it should not disqualify someone from driving a bus. Criminal background checks are not a one-size-fits-all solution. The government has already conceded that not all crimes should disqualify employees from obtaining hazmat endorsements. (Credentialing and Background Checks for Land Transportation Security, 49 C.F.R. §1572.103). While the IBT believes that the list of disqualifying offenses in this regulation is overly inclusive, it does show that the government acknowledges the fact that not all crimes should disqualify a person from all jobs.

For jobs that do not have certification requirements, an administrative law judge or other neutral party should determine whether the disqualifying offenses have relevance to the job. Interested parties should have the right to comment prior to such determinations of relevance.

3. Records Should be Time Sensitive

The Department should ensure that records that are older than seven years, as provided by the Transportation Security Administration for hazmat endorsements, should not be made available to an employer absent a clear justification for the need for such records. A record that is more than seven years old should not be a factor unless more disqualifying offenses have been committed within that time frame. In addition, all efforts should be made to ensure the accuracy of records, specifically those that are less than a year old and may not have a final determination.

4. Use by Private Employers Should be Limited

If private employers are given access to federal criminal background information, there must be a provision that allows the employers to obtain information only for hiring purposes or certification requirements. Absent certification requirements, an employer must articulate a reasonable need for such a background check. If an employer seeks criminal background information on a person that is already employed, the employer should be required to demonstrate the need for the information and be subject to penalties for the wrongful use of the information. If an employer can use the federal mechanisms to check an employee's criminal background for no reason whatsoever, the system will be ripe for abuse.

A major concern to the Teamsters is the use of criminal background checks by employers to intimidate workers and prevent them from exercising their rights under the National Labor Relations Act to engage in collective action. Employers should not be free to harass workers who engage in union organizing campaigns by deciding in the middle of a campaign that they need to check criminal backgrounds. Similarly, an employer should not be in a position to use the system to harass employees who have filed grievances, or serve as shop stewards and officers of a union.

5. Waiver and Appeals Process

Basic due process requires that all employees that are denied employment due to the results of their criminal background check be entitled to a copy of their record so that accuracy of the record can be ascertained. Employees should be entitled to the chance to correct any inaccuracies that appear on background check records and any changes should be made as quickly as possible. Any employee who is denied employment because of something discovered during the background check should have access to an impartial appeals process. Accordingly, an unbiased party should conduct appeals hearings in order to ensure that the same party who denied the employee certification or access to a job is not the same party that makes the appeals determination.

Waivers should be available to people who are disqualified from certifications or a particular class of jobs for good reason. Such waivers should be available for employees who have not committed a relevant disqualifying offense within the past ten years. Again, there should be an independent third party available to make such determinations.

Lifetime disqualifications from certification or from certain categories of employment should be rare and require heightened due process procedures.

6. Privacy Concerns Must be Respected

The privacy of employees must be protected to the fullest extent possible. Any information given to employers should be restricted to that

which is necessary to ascertain whether or not an employee meets the criteria for that particular job. Employers should not be given access to entire criminal records or other information contained in a criminal background record. Similarly, employees should not be asked to consent to allow the employer to receive such information because employees may feel compelled to consent in order to either get hired or remain employed.

Upon consenting to a criminal background check, employees should be given a list of rights guaranteed them under any future legislation concerning non-criminal use of background checks. In addition, employers should be required to inform employees as to whether the criminal background check caused the employee not to be hired and/or discharged.

7. Burden Should Not Fall on Employees

As a labor union, the IBT has the ability to negotiate terms and conditions of employment for our members, including costs for background checks, drug and alcohol testing, or physical examinations that are required in order to perform certain jobs. Unemployed workers should not be required to bear the burden of paying for government mandated background checks. If employers can shift the cost to employees, the demand for background checks will skyrocket. However, if they are required to pay the costs, employers will be forced to determine if the checks are really necessary and will be dissuaded from using background checks to harass or intimidate employees for unlawful reasons.

8. Survey State Laws

The Department should conduct a survey of state laws concerning background checks to ensure that any federal standards at least meet the most stringent due process and employee protections provided by state law. Otherwise, employers may shop around for the most flexible state laws, believing that the only standards they must comply with are those contained in future federal rules and regulations.

Mr. Richard A. Hertling
August 5, 2005
Page 6 of 6

Conclusion

The safety and security of all Americans is a concern shared by the government, citizens and all working people. However, in determining the best way to keep all of us safe, we must balance civil rights, privacy concerns and the need for working people to make a decent living for themselves and their families. The International Brotherhood of Teamsters appreciates the opportunity to comment on this extremely important and relevant issue. We hope to be included in the future discussions regarding this national policy that will certainly impact our members and all working people.

Respectfully submitted,

A handwritten signature in black ink that reads "James P. Hoffa". The signature is written in a cursive style with a large, looping initial "J".

James P. Hoffa
General President

JPH/jmc