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A REVIEW OF THE TRANSPORTATION SECURITY ADMINISTRATION PERSONNEL SYSTEM

HEARING

BEFORE THE

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

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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A REVIEW OF THE TRANSPORTATION SECURITY ADMINISTRATION PERSONNEL SYSTEM

MONDAY, MARCH 5, 2007

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA,
OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Subcommittee, presiding.

Present: Senators Akaka, Voinovich, Coburn, Warner, and Collins (ex officio).

OPENING STATEMENT OF CHAIRMAN AKAKA

Chairman AKAKA. This hearing of this Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia will come to order.

We are here today to discuss the personnel system for Transportation Security Officers at the Transportation Security Administration (TSA). I am very pleased to welcome TSA Administrator Kip Hawley and the President of the American Federation of Government Employees, John Gage, to the Subcommittee.

TSA was created in response to the attacks of September 11, 2001, when terrorists hijacked four planes, crashing two into the World Trade Center, one into the Pentagon, and another in a field in Pennsylvania. That terrible day was a wake-up call for America to increase our security efforts and ensure that such attacks never happen again. To secure the aviation industry, Congress passed the Aviation and Transportation Security Act (ATSA), which, among other things, created the Transportation Security Administration and federalized the aviation screening workforce.

In designing the TSA, the Act required the TSA to follow the personnel system for the Federal Aviation Administration. However, the agency was allowed to employ, appoint, discipline, terminate, and fix the compensation terms and conditions of employment for the TSOs without regard to other laws. A year later, Congress passed the Homeland Security Act to merge 22 agencies, including TSA, into a Department of Homeland Security in an effort to im-

prove the Federal Government's ability to prevent and respond to terrorist attacks.

The Homeland Security Act also provided broad personnel flexibility to DHS in order to quickly respond to threats and ensure that the Secretary had the flexibility to move resources as needed. However, the Act provided that DHS employees would have an independent and fair appeals process, full whistleblower rights, and collective bargaining. TSA was not included in this personnel system, and as a result, TSOs are left without many of the statutory protections in place for DHS employees. In my opinion, a lack of employee rights and protections has resulted in TSA facing high attrition rates, high numbers of workers' compensation claims, and low employee morale.

Without a fair process to bring whistleblower complaints, employees are constrained in coming forward to disclose problems leading to worker injuries or, more importantly, vulnerabilities to national security. Without collective bargaining, employees have no voice in their working conditions, which could drastically reduce attrition rates.

TSA has made improvements in managing the screening workforce, but we must build upon these efforts and give employees a real place at the table. Protecting employees from retaliatory action complements efforts to secure our Nation. Strong employee rights and protections ensure that we have a screener workforce focused on their mission and not preoccupied by fear of retaliatory treatment by management.

On January 9, 2007, the House of Representatives passed H.R. 1 to implement the recommendations of the 9/11 Commission. On February 17, the Homeland Security and Governmental Affairs Committee reported out the Senate companion, S. 4. Both bills contain provisions to require the Secretary of DHS to place TSA under either the FAA or the DHS personnel system. Today's hearing will provide an opportunity to gather the facts on the need for the proposal, as well as how such a proposal, if passed, could be implemented. I believe it is time to ensure that TSA screeners are provided the same rights and protections as all other employees at DHS. I also believe that by denying TSA screeners the same rights provided to other DHS employees, we are reinforcing the very stovepipes we sought to tear down by consolidating agencies within DHS.

Before I turn to my good friend over the years and former Chairman of this Subcommittee, Senator Voinovich, for any opening statement he would like to make, I ask unanimous consent that a statement from the National Treasury Employees Union and a letter from the Federal Law Enforcement Officers Association be included in the record. And I would also like to note that both documents are available to the public.[1]

Senator AKAKA. Sentor Voinovich.

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[1] The prepared statement from the National Treasury Employees Union and a letter from the Federal Law Enforcement Officers Association appears in the Appendix on pages 102 and 110 respectively.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Senator Akaka. I really appreciate you holding this hearing today. You and I have worked together for many years to ensure the Federal Government has the ability to put the right people in the right place with the right knowledge and skills at the right time.

I would like to remind everyone of the great debate on TSA over whether screeners should be Federal or private sector employees. I can remember being at meetings with some of my colleagues on the Republican side where they indicated that they thought the government should not employ screeners. I told them I would take my Cleveland police or my State patrol and put them up against any people in the private sector. As everyone knows, screeners are Federal employees, and thousands were hired in less than a year to stand up the agency.

Now, during this Committee's markup to consider the 9/11 bill, an amendment was adopted that would eliminate the Transportation Security Administration's authority to develop and manage an independent personnel system. At that time, I think I observed that we had not even had a hearing. So again, Senator Akaka, I appreciate you having this hearing today.

I have an opportunity to meet and talk with TSA screeners almost twice a week. In fact, I get patted down every week, and I have told them I could teach them how to do it. These screeners are hard-working, dedicated Americans with the immense responsibility of keeping air travelers safe. They are to be commended for their work, and I would like to extend a special welcome to the TSA screeners who work at Cleveland Hopkins International Airport: Joseph Gattarello and Karen Budnik, who are in attendance today.

The September 11, 2001, attacks revealed numerous shortcomings in our Nation's capacity to detect potential terrorist threats and respond effectively. In response, Congress enacted a number of reforms designed to address current and future national security threats, including the creation of TSA.

Since its creation, TSA has been subjected to several reorganizations, both congressional and executive. TSA was originally housed in the Department of Transportation and was tasked with hiring 55,000 screeners within 1 year. What an enormous task. This problem was complicated by the fact that the traditional employment pool from which TSA had to hire, those previously conducting airport screening, had attrition rates of 125 to 400 percent. That was another reason why I did not think it made any sense to let the private sector continue to be responsible for screening.

In 2003, TSA was transferred to the Department of Homeland Security. Along the way, TSA has faced many hurdles in its attempt to transform itself into a high-performing, robust organization. Personnel challenges are at the top of this list, whether they be attrition of part-time workers, on-the-job injuries, or the need to appropriately reward employees. Many are concerned that creating another new personnel system at this point would further hinder TSA's progress, admittedly less than desired in some cases, in overcoming the challenges it faced when it opened its doors.

Last August, information of one of the most serious threats to our homeland was shared with TSA. Just hours prior to the public announcement, TSA made and finalized the most fundamental change in airport security since September 11. That changed was finished by senior officials at 2:21 a.m. on August 10. The new security measures prohibited bringing any liquid, gels, or aerosols onto an airplane. At 4 a.m., when Transportation Security Officers arrived for the first shifts on the East Coast, they were briefed and trained on the new security procedures, which they then implemented immediately upon opening the first security checkpoints. It was the most magnificent change in airport security since September 11, and it all happened in less than 6 hours from the time of the arrest of the alleged terrorist in the United Kingdom.

Hypothetically speaking, if TSA were subject to collective bargaining as proposed by S. 4, it may have had to go through the process of declaring an emergency prior to taking action necessary to carry out its mission. I think we all agree that the thwarted terrorist plot against U.S. air carriers was indeed an emergency. We understand that. Under other circumstances, however, whether and when the statutory definition of an emergency situation would be applicable to TSA is unclear. Even a minor snowstorm can wreak havoc on our air transportation systems, requiring TSA to work in concert with the airlines to accommodate the resulting spikes in passenger volume.

Under current law, TSA has the flexibility to reassign personnel on a real-time basis in response to any situation. Under S. 4, would TSA have to declare the minor snowstorm an emergency in order to immediately reassign its personnel?

One of the things that I learned firsthand as mayor, and then governor, is that there is always room for improvement in human capital management. Accordingly, I understand the reason for the proposal in the underlying bill. It may well make sense for Congress to enact legislation providing TSA employees with the right to appeal adverse actions before the Merit Systems Protection Board and to seek protection for whistleblower claims with the Office of Special Counsel. However, it is important to note that the existing agreement for the review of whistleblower claims is an example of how TSA has responded to the needs of its employees. The statutory ability to appeal to the MSPB and OSC could be an important safeguard for screeners to help ensure due process.

The proposal in S. 4 is well intended; however, I am concerned that Congress has not fully considered its impact and the need to balance the changes that would be required against the potential disruption to our air transportation security system.

I am committed to working with my colleagues to continue to improve TSA. Although much work remains to be done, the progress made to date on certain issues, such as the reduction in worksite injuries, is encouraging. More importantly, I think it reflects the sincere desire on the agency's part to take any steps necessary to create a good working environment for its employees. I hope that we can find a workable solution that strikes the right balance between promoting a flexible system and protecting the rights of individuals who choose to serve as screeners. I look forward to learning from our witnesses how this can best be accomplished.

Thank you.

Chairman AKAKA. Thank you very much, Senator Voinovich.

I am so glad we have other Subcommittee Members here. I would like to call on Senator Coburn for any statement he would like to make.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Thank you, Senator Akaka. I appreciate you having this hearing.

I think this hearing is about 3 months late. This is already part of the bill. It has already had an amendment on the floor. And the American public should be disgusted with the process. No hearings were held on this prior to the Committee markup of a major change in the security at airports in this country. None. That is us not doing our job properly. And we are having this hearing because I specifically made a point during the markup that we had not had any hearing on this issue.

The issue is now considered a kind of backdraft solution because it does not matter what we find here today. The bill is on the floor. It is already part of the bill. And the President has already said he will veto the bill if this is in it. So we could have crafted legislation to more favorably impact TSA employees had we had a hearing long before we had a rush markup on a 9/11 bill.

I look forward to hearing the very real needs of the Transportation Security employees in this country and looking at how we address those and finding what is best for the government, good for them, good for the traveling public, and the security of this country. Doing this after the fact, although I am very appreciative that it is happening, I think says a whole lot about how the Senate operates. And it is not unusual that we do things this way, and the American public ought to demand a change. And this is in no way to reflect on Senator Akaka. Senator Akaka recognizes that this bill was rushed. It is a leadership bill. It was told to get out, and so it came through.

So I am not upset with Senator Akaka at all. I am very pleased that he is having this hearing. But I think this type of action just shows the American public that what we are up to is politics and not good policy.

Thank you.

Chairman AKAKA. Thank you. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

Mr. Chairman, as a courtesy, I would like to yield my place to the distinguished Ranking Member of the full Committee, and then I will follow.

Chairman AKAKA. Thank you very much, Senator Warner. Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you very much, Senator Akaka, and thanks to my distinguished colleague from Virginia.

I very much appreciate, Senator Akaka, that you and Senator Voinovich are holding this much needed hearing. It is an opportunity for us to grapple with a very important issue. Throughout our Committee's work on homeland security, it has become clear

that the ability to respond quickly and effectively to changing conditions, to emerging threats, and to new intelligence is essential. From the intelligence community to our first responders, the key to this effective response is the flexibility to put assets and, most important, personnel where they are needed when they are needed.

We have to figure out how we can maintain this needed flexibility while at the same time ensuring protections for the employees who are working so hard to safeguard our Nation. It is my hope that this hearing will help both sides of this issue reach across the aisle and stop trying to score political points and instead work together to find a middle ground. And I think, Mr. Chairman, that there is a middle ground in this area. I have been working with some of my colleagues to see if we can come up with legislation that would bring TSA employees under the Whistleblower Protections Act—that makes sense—but also allow appeal to the Merit Systems Protection Board of adverse actions such as demotions or firings.

It seems to me that these are important employee rights that we can extend to TSA, and then we should take the next year to more thoroughly study the personnel system to get GAO involved, to get the employees involved, to get the employee representatives involved, and to work with the Department to see if there is more that we can do. Just as we strive to protect our Nation and our people without diminishing civil liberties, we must do all that we can to build a strong homeland security structure that upholds the rights of the personnel who strive so hard to protect us.

I hope that we will work to try to achieve this middle ground to give the flexibility that TSA does need, and it has proven that as recently as last summer when the thwarted airliner plot required the redeployment of personnel.

So, Mr. Chairman, my plea to everybody here, as well as to our colleagues on both sides of the aisle, is let's sit down, let's take some steps that we can take now without impeding TSA's flexibility while enhancing the employees' rights.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Collins.

Senator Warner, thank you for your courtesy. You may now proceed with your statement.

OPENING STATEMENT OF SENATOR WARNER

Senator WARNER. Thank you, Chairman Akaka. I would like to associate myself with colleagues here who have indicated that we will try and seek to work this out. I have been privileged here in the Senate for 29 years as a member of this Senate, and on behalf of Virginia, to work with many Federal employee organizations. And I will carefully follow and participate in trying to come to a middle-ground situation.

In fairness to those who are present here today at this open public hearing, I think our record should reflect that we had a classified briefing from the intelligence community. This witness before us today, Mr. Hawley, was the principal briefer. But there were very compelling points to that meeting, and I am hopeful that somehow, without compromising any sources, methods, or otherwise, the Chair and the Ranking Member can figure out how best

to deal with that intelligence component in such a way that the persons who are advocates here today on behalf of their employees feel that they have as broad an understanding of the reason why certain Senators are making this position and why the President probably is influenced by that intelligence quotient to this important subject in announcing the veto.

Also, I would like to put in the public record this letter which 35 Senators, including myself, have signed on behalf of the President, setting forth our concerns regarding this piece of legislation and his representation, the President's representation that it is so serious that he would consider the veto, exercise of the veto.[1]

Chairman AKAKA. It will be included in the record. Thank you very much, Senator Warner.

At this time I want to again welcome Assistant Secretary Kip Hawley, the Administrator of TSA.

I ask for you to stand with me and raise your right hand as it is the custom of this Subcommittee to swear in all witnesses. Do you solemnly swear that the testimony you are about to give to this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HAWLEY. I do.

Chairman AKAKA. Thank you. Although statements are limited to 5 minutes, I want both our witnesses to know that their entire statements will be included in the record.

Mr. Hawley, please proceed with your statement.

TESTIMONY OF KIP HAWLEY,[2] ASSISTANT SECRETARY/ADMINISTRATOR, TRANSPORTATION SECURITY ADMINISTRATION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HAWLEY. Thank you very much. Good afternoon, Mr. Chairman, Senator Voinovich, Senator Collins, and Members of the Subcommittee. I have submitted testimony for the record, but since time is short, I would like to get right to the point.

This issue has been around for a while in the human capital scenario, and feelings run very deep. But the commitment to the mission that TSA has I think is one that we all agree on, and I know our outstanding workforce of TSOs, whatever their opinions on this personally, we are all united on the importance of the mission. And one of the gratifying things of this current debate is the widespread recognition of the Transportation Security Officer as a critical piece of our security.

And so I respect the opinions and I respect those who offer them that think collective bargaining is the way we should go. But I have to say that there will be a serious negative security impact if the labor provision adopted by the Committee or the alternative pending amendment become law.

Both proposals would dismantle the innovative human capital authorities given to TSA by Congress after September 11 and replace it with a pre-September 11 personnel system that is unsuited to TSA's real-time security mission. While the human capital issues

[1] The letter referred to appears in the Appendix on page 100.
[2] The prepared statement of Mr. Hawley appears in the appendix on page 35.

are significant, the security issues are urgent and must be addressed first.

TSA operates in a real-time, high-intensity environment where seconds matter and the stakes could not be higher. We count on our TSOs, among other things, to deter and stop an attack that may be in preparation or in progress. Our people face these scenarios at over 400 airports across the Nation every day. In this world, the so-called dots referred to by the 9/11 Commission are not obvious, and connecting them in time is not assured. When the safety of the public is on the line, taking an old solution and putting a new cover on it and then making it law without full examination can have alarming, unintended consequences in the real world. That is the case with these provisions and why I must speak out clearly about the uncomfortable reality of increased risk brought on by them. As Senator Warner mentioned, I briefed Senators last week on classified specifics of these concerns.

In a bill that uses the name of the 9/11 Commission, security must come first. It does come first at TSA, and all of the improvements we have implemented in the last 18 months is an additional measure that has been instituted at TSA. I have put up a chart that indicates each one of those highlighted items.[1] These improvements have been implemented for our workforce, and they acknowledge the capability we already have in our TSOs, and seek to prepare and engage them as security professionals.

As has been mentioned earlier, TSOs reported for work on August 10 and, without prior notice, trained for and implemented the most extensive security changes rolled out since September 11. And TSOs did it in real time, literally live on TV. The only way that could happen was that that is something that we practice every day at TSA, the ability to move fast, to make changes on the fly, and it was because of that preparation that we were able to move as fast as that.

Proponents of collective bargaining for TSOs point out that any labor agreement would include provisions for emergencies. But it is not just about emergencies. It is about what they do every day. TSA's mission requires that its officers be proactive, that TSOs constantly change what they do and where they do it. They are required to flex to different places in the airport to meet suddenly changing security and operating needs. A system that sets up outside arbitrators to review these constant changes after the fact, without the benefit of classified information that explains the rationale, sets up a morass of wasted time that detracts from the focus on security. Today, if a TSO is not making the grade, that individual can be taken off the checkpoint immediately. Under collective bargaining, that person could be screening passengers for months before the process finally runs its course.[1]

TSOs are tested frequently in the bomb detection skills, and those who do better get paid better. We all know that incentives drive performance. It does not make sense to drop that from a system and then get in place of it one that carves out front-line TSOs and eliminates their incentive to excel. How does it benefit pas-

[1] The chart referred to appears in the Appendix on page 96.
[1] The chart referred to appears in the Appendix on page 99.

senger security to make the TSO not accountable for the security outcome?

We all wish September 11 never happened. We all wish the threat of terror would go away. But September 11 happened, and we know it did not start in 2001, and it will not end in our lifetimes. And that is the uncomfortable truth.

We know of terrorist interest in attacking the U.S. aviation system. We know of attack planning. We know of attack training, and we know of terrorist movement, including in our direction. That is the uncomfortable truth. Taking our TSOs who today flex and adjust to meet real-time needs and force fitting them into an old system would have far-reaching, negative security consequences. Going backwards to a system that adds bargaining, barriers, and bureaucracy to an agency on whom travelers depend for their security can be characterized as many things, but it does not improve security. And that is the uncomfortable truth.

I thank the Subcommittee, and I would be happy to answer questions.

Chairman AKAKA. Thank you very much, Mr. Hawley, for your statement.

Mr. Hawley, the National Labor Relations Board ruled in June that private companies which provide screener services at our Nation's airports can organize and bargaining collectively with their employer. Can you share with us what airports utilize private screeners?

Mr. HAWLEY. Sure.

Chairman AKAKA. And how many of these airports employ a screener workforce that engages in collective bargaining?

Mr. HAWLEY. Well, the TSA contract is with a provider, and then what the provider's arrangements are with their underlying employees is a matter for them to manage. And we have performance specifications. San Francisco is the largest where there is a unionized workforce, but our relationship is with Covenant, and we give them the requirements of things that they must perform to. And it does present a bit of a disconnect to not have the ability to flex and flow them across, for instance, to Oakland or down to San Jose.

Chairman AKAKA. In his written testimony, Mr. Hawley, Mr. Gage mentions the collective bargaining agreement between the Fraternal Order of Police and the U.S. Capitol Police. This agreement took effect a year and a half after September 11, 2001. The agreement states that the chief of police determines if there is an emergency, and then he or she can suspend provisions of the agreement as needed to respond to the emergency.

What are the differences between the Capitol Police, which protects Members of Congress, their staff, and visitors, and TSOs? Why wouldn't such an agreement work for TSA?

Mr. HAWLEY. Sir, the job is very different, and the job of a TSO is one where you do not know whether you have an emergency until it is over. And in the aviation business, that is too late. I will give you an example.

Suppose you have two buses pull up outside the terminal and 400 people come off and come to your checkpoint. Is that just a traffic jam? Or are those several hundred people coming there to

rush your checkpoint? And you just do not know until you flex to find out the answer to that and process it. And the 9/11 Commission report is all about connecting the dots, and you have to be able to flex and change up your look and be able to move to different places based on an adaptive enemy. And it is a very different thing to measure in an emergency like August 10 versus every day something happens where you do not know if it is an emergency. And if you do not treat it seriously and it turns up to be an attack instead of a lot of people showing up at the same time, that is not doing our job. And so it would not work, that arrangement would not work for TSA.

Chairman AKAKA. In a sense, the Capitol Police makes similar decisions, and so for that reason, at this point I am not seeing the distinction.

Mr. HAWLEY. Well, there are 400 airports, and we operate virtually around the clock around the country. And it is a system that we protect, a network that we protect, and we have to be able to—we cannot just take one area and patrol one defined area like the Capitol and perform the important security needs there. This is a dynamic network that we are charged to protect against an enemy who can attack it from limitless places.

Chairman AKAKA. Mr. Hawley, I would like to clarify the issue of veterans' preference for TSOs.

Mr. HAWLEY. Good.

Chairman AKAKA. The ATSA only requires preference for veterans who are retired as opposed to the requirements for other Federal agencies that cover individuals honorably discharged from active duty. It is my understanding, however, that as a matter of policy, TSA gives preference to both groups. Your chart states that veterans' preference is guaranteed and that veterans constitute 26 percent of the TSO workforce. However, AFGE disputes those claims.

Can you tell me what percentage of TSOs are retired from the military versus those who are honorably discharged and how veterans are able to enforce their rights?

Mr. HAWLEY. Sure. Well, it is the whole discussion of the appeals process that we have, which is another entire discussion. But our veterans' preference is at least equal and I believe broader in the sense of the retired folks that get veterans' preference on hiring, and we have more—our percentage is something like, as you mentioned, 26 percent and I think governmentwide it is 25 percent on veterans.

So we have very close working relationships with veterans, and they form a very important part of not only our agency but our supply of new folks coming in.

Chairman AKAKA. Mr. Hawley, you mentioned the United Kingdom air bombing plot and how as a result TSA changed the nature of the screeners' work. I understand that airport screeners around the world, including those in the U.K., have collective bargaining rights. If U.K. airport screeners can bargain, why not TSOs in the United States?

Mr. HAWLEY. Well, we ask a great deal of our TSOs, frankly, more than any other country. And it is the thinking, judgment, and engagement part where we add additional layers: Behavior obser-

vation, bomb appraisal officers; we are now into document verification. We have a lot of the things that you see up here. We ask our guys to do a lot more security judgment, and that is why in the United States I would stand up our response in the United States and what our TSOs did with anybody in the world as to how they can quickly enter into a new security regime.

Chairman AKAKA. Before I turn to Senator Voinovich, I want to follow up on my first question. You mentioned that screeners at the San Francisco airport can bargain. Can you tell me why it is OK for private screeners to bargain and not TSOs?

Mr. HAWLEY. Well, the relationship that TSA has with the sponsoring company, Covenant—and we hold them to a certain level of detail. We do not have the ability to share with those TSOs some of the things that we are able to share with our others, with our own employees.

Chairman AKAKA. Senator Voinovich.

Senator VOINOVICH. Thank you, Senator Akaka.

As you know, I have been a strong advocate for our people who work in the Federal Government, and I have a chance to talk with them as I travel around the country, especially in Cleveland. I would like to know from you how have you used your existing flexibilities under the current law to respond to the concerns and needs of the people who work in TSA.

Mr. HAWLEY. Yes, sir. Those are critical to our success, and we use our—we have a pay-for-performance system that we have rolled out that operates, that is fully funded, fully participated in by our TSOs. That comes because we have the ability through these authorities. We also have the ability with part-time workers to extend full-time benefits to part-time workers based on those authorities.

So those are two critical pieces of our tool kit that we use now that would be taken away.

Senator VOINOVICH. How about adverse actions and people who are unhappy with the way they are being treated? What options do they have?

Mr. HAWLEY. They have the full gamut. We have an agreement with the Office of Special Counsel on the whistleblower side, and we have a parallel system to the Merit Systems Protection Board, as well as Ombudsman and the whole—we have four or five different routes. And it is one of the issues that, as you know, we have had discussions about—as something that may be worth discussing more legislative remedies in that area, which we are happy to pursue.

Senator VOINOVICH. Last week, my staff met with a group of screeners who believe the decline in EEOC and OSC and injury claims has occurred not because of improvements in the working conditions but because of fear that they will be fired. How would you respond to such concerns?

Mr. HAWLEY. Well, there are protections in place, and I would urge anybody anywhere at TSA who has a concern like that to either go through the Ombudsman or go through some of the outside opportunities that there are for investigation of them.

I think on the injury side, though, the injury reduction has been remarkable, and I believe it coincides with some of the other things

we are talking about in terms of better training, upgrading the job, career progression opportunities, pay-for-performance. All those things give incentives for people to want to work, and as I think you know, we have cut our lost workdays in half in the last year.

Senator VOINOVICH. When was TSA established?

Mr. HAWLEY. November 19, 2002, was the first stand-up date.

Senator VOINOVICH. So it will be 5 years this year?

Mr. HAWLEY. It will be 5 years, yes.

Senator VOINOVICH. Well, it is a major undertaking to stand up an agency, especially with the number of people TSA needed. So the fact of the matter is that you are still working out some kinks in the process.

Mr. HAWLEY. Clearly, and the stand-up was notable for the speed and the size, but I think some of the earlier employee surveys demonstrate these problems. And we did have a high attrition. Our injury rates were too high. In fact, when I came to this Committee for confirmation, it was one of the top issues I mentioned that struck me on coming into the job. And we have a chart over there[1] with the yellow highlighting indicates these are all initiatives we rolled out to get at those, to put in career progression, to put in pay-for-performance, put in additional training and additional career opportunities.

Senator VOINOVICH. You heard the argument that unionized screeners in San Francisco, the unionized Border Patrol that has not been a problem. One thing that I think has got to be clear is that you do have people in TSA that belong to a union.

Mr. HAWLEY. They are contractors, and one of the——

Senator VOINOVICH. I am talking about people that work for TSA.

Mr. HAWLEY. Oh, yes. I am sorry. You are right, absolutely.

Senator VOINOVICH. People that work for TSA that belong to Mr. Gage's union.

Mr. HAWLEY. Absolutely. TSOs have the opportunity to join a union for representation purposes.

Senator VOINOVICH. Right. And the fact of the matter is that when you belong to the union, you can collective bargain everything but wages. Is that correct?

Mr. HAWLEY. Well, not currently at TSA, but under this proposal, yes. In other words, we do not have collective bargaining.

Senator VOINOVICH. Right. But I am referring to other organizations like the Border Patrol.

Mr. HAWLEY. That is correct. Yes, sir.

Senator VOINOVICH. OK. So they can bargain management rights and so forth, but not wages.

Mr. HAWLEY. That is correct.

Senator VOINOVICH. That is taken care of under separte statute.

Mr. HAWLEY. I believe so, yes.

Senator VOINOVICH. Are there aspects of the personnel system that TSA has put into place for its workforce that would not be possible if TSA's authority under Section 111(d) of the Transportation Act was eliminated?

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[1] The chart referred to appears in the Appendix on page 96.

Mr. HAWLEY. Well, I think we mentioned a couple of them, with the pay-for-performance that is out there and the experience that the Department has had, has struggled for 4 years trying to roll out a pay-for-performance, and that has been blocked at every turn. We are the one entity——

Senator VOINOVICH. Have you done any employee surveys to gauge how people are responding to the pay-for-performance?

Mr. HAWLEY. Yes. I think we have seen our—our attrition is one area that has dropped. We started out with a retention bonus program that came out over the summer and fall, and we just put out—about $52 million of the 2006 pay-for-performance just went out at the beginning of February. So I think our employees have seen us put our money where our mouth is, and for the first time, there are permanent pay raises that happen at TSA when you excel in your job. And that is a critical piece for us moving forward, is to incent our folks so that they are leaning forward and looking for threat objects versus, just——

Senator VOINOVICH. Do employees get the regular across-the-board salary adjustment?

Mr. HAWLEY. Yes, they get the same—that is a separate program.

Senator VOINOVICH. Then when the Federal Government receives an across the board pay increase TSA employees do also. On top of that they can receive an additional raise based on performance.

Mr. HAWLEY. Exactly. And I should say we also took some of the money for the non-TSOs in last year's pot, and I put it in the TSO pot to give the TSOs more money. Nobody negotiated that.

Senator VOINOVICH. And you think that it is working and that for the most part the employees are happy with it?

Mr. HAWLEY. Absolutely.

Senator VOINOVICH. And you could not do that under the collective bargaining?

Mr. HAWLEY. Correct.

Senator VOINOVICH. My time is up, Senator.

Chairman AKAKA. Thank you very much, Senator Voinovich. Senator Coburn.

Senator COBURN. Let me make sure I understand correctly. If, in fact, what is on the floor today goes through and becomes law, TSO officers will bargain for everything except wages?

Mr. HAWLEY. I think functionally that is about right, yes.

Senator COBURN. And so what is driving—what have been the problems that are driving—most of the time, people do not want to—if they perceive—they perceive a lack of either input or loss.

Mr. HAWLEY. Yes.

Senator COBURN. What is driving this desire for people to have a union?

Mr. HAWLEY. Well, we have a chart here that we picked out the arguments that we have heard and put them up in the green on the left, and on the right are examples.[1] So there are a number of issues, and a lot of them are legitimate issues, and they are ones that we are working on. And as I mentioned, on the other chart, these are things we have had the ability in the last year to jump

[1] The chart referred to appears in the Appendix on page 95.

on top of and make changes and implement. And I have a very active Employee Advisory Council that meets with me, and over 90 percent of our employees are covered by these advisory groups. And we are able to move on a dime to make these changes. And I would stand that record of work on our workforce and enhanced capability for our workforce, including permanent pay increases and compensation and training and career, all those things rolled out in a year. And if we had to go through hiring lawyers and our TSOs hiring lawyers and letting them try to negotiate it, that just simply would not happen.

Senator COBURN. So other than wages, the projected cost to the TSA if, in fact, this comes into being, have you all calculated what the——

Mr. HAWLEY. Yes, sir.

Senator COBURN [continuing]. Projected cost to the Federal Government, non-wage costs are to the Federal Government?

Mr. HAWLEY. Correct.

Senator COBURN. Not on the security issues. Just the costs.

Mr. HAWLEY. No, the cost to set up a process in which we could then engage in collective bargaining we estimate around $160 million.

Senator COBURN. So $160 million.

Mr. HAWLEY. Yes, sir.

Senator COBURN. From your managers and supervisors, is it your feeling that TSO employees are desirous of collective bargaining?

Mr. HAWLEY. I hear, I have a lot of e-mail, I had a national kind of electronic town hall last week, and there are some who want to give collective bargaining a try, but, frankly, there are a lot that I talk to, particularly out in person or in e-mails I get, that do not. And I think what they are really looking for is performance. They are looking to see whether the leadership of TSA puts forward real career progression, real pay increases, real training—those things. And, in fact, we have and that has resulted in a turnaround, I believe, in our employee attitude.

Senator COBURN. So let me see if I can understand this. Union representation for TSO officers will not relate to wages.

Mr. HAWLEY. Correct.

Senator COBURN. But will relate to everything else, and everything else in terms of their job is really related to security and flexibility of maintaining security. So we have over here—we are not going to collective bargain for wages. We are going to collectively bargain for all those things that might inhibit us to have the greatest safety that we might need.

I do not understand. TSO is out there to protect the American public. This is unlike many others. And I would say to you that the Border Patrol got collective bargaining through the back door, not the front door. It was not anything that we passed that allowed it. It was the court that ruled that. And the fact is that if you talk to the head of the Border Patrol, that at multiple times makes their job much more difficult to protect our borders.

So what we have is we are going to be negotiating the flexibility that is required to secure this country on a moment's notice, and we are going to have to have a union representative OK it. And if, in fact, it is only going to be on an emergent basis that you are

not going to have to do that, then we are going to spend a lot of time after that.

Won't the tendency then be to have a whole lot more emergencies?

Mr. HAWLEY. Well, it would not work for us because we change frequently to change up the look for anybody watching. We also change because the flight schedules of aircraft are different, and we cannot predict day to day what is actually going to happen. It really goes back to the fundamental strategy that the 9/11 Commission talks about, which is the connect-the-dots strategy that you cannot predict. They do not do you the favor of letting you know ahead of time that they are coming.

And so you have to be quick on your feet. You have to evaluate each thing that is happening as "Is this part of something else?" And then if you want to be—if you are concerned about it, you need to be able to move quickly. And it just does not allow itself—and I respect the thought, but the idea of negotiating when you are at your workstation and when you are not at your workstation—because we do not know if there is a threat some place we have not predicted, like in Cyprus, we have to go there to secure the people flying back to the United States.

So limiting that or trying to explain it afterwards just does not work for our business.

Senator COBURN. There must be a grain of truth to the problems on whistleblower. You have a Memorandum of Understanding with the Department of Homeland Security that says that TSOs, Transportation Security Officers, have access to whistleblower protection. Well, if that is the case, why is this an issue in this debate?

Mr. HAWLEY. Because it could be changed, I guess, and that having it in legislation would make it an immovable object, so to speak.

Senator COBURN. Are you familiar with specific complaints where people have been whistleblowers and have not had protection?

Mr. HAWLEY. I am not, no.

Senator COBURN. All right. My time is just about up.

Would you discuss again—I was a little bit confused by Senator Akaka's question on veterans. As I read the data, you actually employ more veterans than almost any other agency. Do you seek a preference between retired and non-retired?

Mr. HAWLEY. No.

Senator COBURN. So there is no preference that you go one direction or the other?

Mr. HAWLEY. No.

Senator COBURN. I will yield back.

Chairman AKAKA. Thank you very much, Senator Coburn. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Hawley, Senator McCaskill has introduced an amendment to the Committee-passed bill that is intended to give you more flexibility to deal with emergency situations, which many of us want you to have that kind of flexibility. Her amendment states that the Under Secretary may take whatever actions may be necessary to carry out the agency mission during emergencies, newly imminent

threats, or intelligence indicating a newly imminent emergency risk.

Why isn't that language adequate?

Mr. HAWLEY. Well, I appreciate the thought and the attempt to address it, but in the world that we operate, every morning we sit in the Counterterrorism Committee and we literally talk amongst all the agencies and intelligence and law enforcement and the military about threats ongoing at that time. And there are at any given point a number of different threat streams that you worry about. And if I could just say I know this one is the one I have really got to worry about and that one is going to be the emergency so, therefore, I am going to make my changes in this airport or that airport, that would make the job a whole lot easier.

But it is a bedeviling array of dots out there, and we have the responsibility to make sure that not one of them is allowed to progress and become an attack on the United States. And so we constantly try to move and adjust, and you cannot be sure, until it is too late, that you have had an emergency. You just do not get the advance warning. It is not like a fire erupting or an accident happening, then you know you have an emergency and then you can declare it is an emergency now, folks, you have got to leave your post, because in our business, if it is an emergency, you have had an incident.

Senator COLLINS. I think that her language is an improvement over the Committee bill, but I agree with you that there are some problems in it.

Is the word "newly" a problem, that it only applies to newly imminent threats? I was surprised that it did not just say that you had the flexibility whenever there was an imminent threat. I do not know why we would want to qualify that to say that it has to be a newly imminent threat. If it is an imminent threat, surely you ought to have the flexibility.

Mr. HAWLEY. Well, this enemy is very patient, and there is planning going on for years. Is that imminent? Is moving around people in advance of an operation, is moving around equipment in advance of an operation, is that a threat? It would tie you up. It would convolute—it convolutes up me, trying to sit there and read through that and try to imagine is it this or that.

Trying to define ahead of time how the terrorists are going to attack and then build our security strategy based on that I believe is foolish. That is the whole point of terrorism, is to get around whatever it is that they can figure out you are doing, and that is how they do it. So you do not want to give them a static target. You have to be able, by nature of the job, to keep things moving. So I think trying to define in advance an emergency is not a winning strategy.

Senator COLLINS. Let me turn to a different issue, and that has to do with Rehabilitation Act coverage, which seems to me to be a very reasonable right for the employees to have. I am confused by your chart versus what I hear from some of the employees. Your chart clearly says Rehab Act coverage guaranteed, yet I am told that there is an exemption in the law for the TSOs and that they do not have coverage under the Rehab Act. So explain to me how

you can say that Rehab Act coverage is guaranteed given this exemption.

Mr. HAWLEY. Right. The issue is that under ATSA there is a statutory definition of what you have to be to be a TSO, and it says you have to have some physical capabilities, such as the ability to lift, recognize color. There are a variety of things that a TSO has to be physically capable of, and that is written in the law. And so what is covered in the law is exempt, that is, it is different from the Rehabilitation Act. What is not specifically exempted by law is covered by the Rehabilitation Act.

So TSA, once you get past the initial ATSA requirements for hiring, does have Rehabilitation Act benefits.

Senator COLLINS. I am not sure that clarifies——

Senator COBURN. So if somebody comes in, if I may, and they are physically fit and they get a back injury——

Mr. HAWLEY. Correct.

Senator COBURN. They were physically fit, so they are entitled to rehabilitation.

Mr. HAWLEY. Yes.

Senator COLLINS. Thank you for that clarification, Dr. Coburn. That truly was helpful.

I want to go back to the issue of the Customs and Border Patrol officers. They, too, are performing critical jobs. They, too, are adjusting all the time to new reports, new intelligence, changes in the threats. What is different? You touched on this earlier when Senator Voinovich raised this issue, but how has collective bargaining been a problem for the Customs and Border Patrol agency? Why do you draw a distinction?

Mr. HAWLEY. It is hard to do with one hand, but this is the labor agreements that CBP has to deal with, and we, on the other hand, have the ability to take intelligence, make a decision, and move. And that is sort of the short form of it, but these were pre-September 11 negotiations that happened, and it was a different world, and maybe the jobs were separable to say, yes, you are in this sector or you are in this position, and whoever comes to you, you do whatever it is you do.

But the difference is our guys are proactive and move into different jobs, do different things in different places in an unpredictable fashion.

Senator COLLINS. You described an internal process that you have established whereby employees of TSA can appeal adverse actions. But that is not the same as having an independent process outside of the agency, with, arguably, a more independent arbitrator in the Merit Systems Protection Board.

Do you object to extending Merit Systems Protection Board protections for appealing adverse actions to the TSOs?

Mr. HAWLEY. No.

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Chairman, if you will indulge me for just 30 seconds, I want to explain to our next panelist, Mr. Gage, that I have been called to go to the floor. I am managing the 9/11 bill on the floor. My staff will stay and give me a full report, but Senator Feinstein has come over to offer her amendment, and I need to go debate it. So I am going to leave for the floor.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Collins, for your participation here. We will now have a second round of questions.

Mr. Hawley, Chapter 71 of Title 5 provides management with explicit rights, including an absolute right to deploy employees and to assign them work. In fact, no agency is required to bargain about work methods generally, and agencies are actually forbidden to bargain about their internal security practices. Moreover, every agency has the authority to fix broad and flexible job descriptions for agency personnel.

What flexibility are you lacking under Chapter 71 of Title 5?

Mr. HAWLEY. Well, I would have to go look up Chapter 71, but Gale will tell me if I am wrong in this. But the principal issue we have is that under the authorities we have for TSA, it is wide open. You can figure out what it is you need to do and do it, versus a system where you have to identify in advance what is permissible and identify those things, agree to it, and then move on, and then if you want to change what you previously agreed to, you are going to have to go back and fix it. And that is the problem that we face with—we have back doors at airports. We have air cargo. We have a lot of the issues that come up in other hearings about what are you doing about these various issues around the airport away from the checkpoint. And we use our TSOs in a variety of ways that are not predictable and not something that we could categorize out in advance. And it almost is silly to say the flexibility we need, if you get into restrictions at all, that is where the problem is, because specifically the terrorists go where they know that you are not going to be. So if they know that your agreement says you are going to be here, then they are not going to go there; they will go somewhere else.

So our security requires us to be able to keep that changing and a mystery and them not be able to plan around our business.

Chairman AKAKA. Mr. Hawley, Senator McCaskill has an amendment—and this was mentioned by Senator Collins—to the Senate 9/11 bill that retains the flexibility under Section 111(d), but allows for collective bargaining except for pay purposes. Would Senator McCaskill's amendment allow you to keep TSA's pay-for-performance system?

Mr. HAWLEY. Our understanding is that it would not, and there is good language in Senator McCaskill's amendment, but the net effect of it, when you get right down to it, is that we would lose our personnel authorities that we use for the pay-for-performance and the other items I mentioned.

Chairman AKAKA. I would like for you to clarify something for me from the earlier line of questioning. When you said that screeners at San Francisco and in London do not have access to the same information as TSOs, you were not implying that these airports were less safe, were you?

Mr. HAWLEY. No, not at all. In fact, I am from there, and I fly out of San Francisco as one of my home airports. It is one of the finest in the world, I might add.

Chairman AKAKA. Thank you for that.

I understand, Mr. Hawley, that TSA has an memorandum of understanding (MOU) with the Office of Special Counsel to investigate whistleblower complaints. As you know, OSC is charged with investigating all prohibited personnel practices, including whistleblowing.

Is there any reason why the MOU with OSC is only for whistleblowing and not the other prohibited personnel practices?

Mr. HAWLEY. I have to say I would go back and check with the lawyers on that. But one of the things that Senator Collins has been discussing over the last couple of weeks is aligning all the systems into one and doing away with that ambiguity. So that is something that we could discuss, but at the end of the day it is not something I would say is a security problem that I should address here.

Chairman AKAKA. Thank you.

Mr. Hawley, approximately how many whistleblower cases from TSA employees are investigated by OSC each year? And what action has TSA taken as a result of OSC findings?

Mr. HAWLEY. I am told only one.

Chairman AKAKA. Thank you.

Mr. Hawley, TSA has just made the first payout under PASS, the pay-for-performance system. This Subcommittee held a hearing in September 2006 which focused on serious problems with the Senior Executive Service pay-for-performance system. How are you making meaningful distinctions in performance?

Mr. HAWLEY. Well, I am very proud of that because it is an example of how working with employees—this is really employee participation, and we had thousands of our TSOs involved in the construction of the program, and it is all broken down into technical proficiency, which is about a third of the value, and then another third goes into your skill sets, and then you get into things like attendance and what have you. And there is even a bonus provision for services above and beyond.

I have got an advisory council, and in the December meeting they came to me and said this is not enough of a payout to make the statement that you really care about this. And so we turned around and invited the head of our advisory committee and the head of the Assistant Federal Security Director for Screening Advisory Committee, to join me and our senior leadership, and we essentially doubled the payout. And that was in a couple of hours, and it was really because of our commitment to want to demonstrate to the workforce that this was serious, this is real, and it is lasting, and we have been able to accomplish that.

Chairman AKAKA. Did you invite any union representatives to the initial development efforts?

Mr. HAWLEY. No, sir. Our employees did not have to pay union dues to get that service. We did that as part of our job, and we are on a team, and we did it together.

Chairman AKAKA. Thank you. Senator Voinovich.

Senator VOINOVICH. First of all, I would like to say that I am very interested in pay-for-performance. I happen to be an advocate for it; in spite of criticisms over the SES system, and I acknowledge—they did have some problems with it, I support it. We have been working with Linda Springer, and I understand from trav-

eling around the State, OPM has made improvements. In addition, I know that Spiral 1.1 for the National Security Personnel System at the Defense Department has worked out well. In fact, I just met with employees at Wright-Patterson Air Force Base to find out how it is working.

Mr. Hawley, I want more information about how TSA's personnel system works, I think it is really important. I think people that are getting the job done ought to be rewarded. They should be recognized, and I think that is the way you get them motivated.

What I would like to have from you, and I am going to ask the same thing from Mr. Gage, is a list of things that TSA could not do if subject to collective bargaining. I want you to be specific.

What would collective bargaining provide employees that they do not have now? Also, what has TSA done to provide employees an independent appeal process for an adverse action and protections for a whistleblower.

In addition to that, I want you to check with the head of the Department of Homeland Security, Mike Chertoff. I want to know how the Border Patrol meets its mission while working under collective bargaining agreements.

Mr. HAWLEY. Yes, sir.

Senator VOINOVICH. How many whistleblower complaints have you had?

Mr. HAWLEY. I believe the answer is that is the one that we have.

Senator VOINOVICH. You have had, to your knowledge, one whistleblower complaint since when?

Mr. HAWLEY. Since start-up.

Senator VOINOVICH. In the whole organization?

Mr. HAWLEY. Right.

Senator VOINOVICH. And do you keep track of the number of complaints that you have had from your people over the years in terms of being assigned arbitrarily or taken advantage of or not being treated fairly.

Mr. HAWLEY. Yes.

Senator VOINOVICH. Do we have any of that recorded?

Mr. HAWLEY. Yes, we do. I do not have the chart blown up for you here, but we have got our EEO complaints. We have had a 62-percent drop from 2003, and that is a lower EEO complaint rate than Department of Education, Department of Labor, Department of HUD, U.S. Postal Service, and others.

Net-net, it is a fraction, it is a very small piece. The day-to-day issues, we have a model workplace program that we try to get our employees and our management folks talking face to face, and that is clearly the best way to have things go. And I think the overall employee attitude combines all of those things—the workplace environment, whether the environment is safe, whether your boss is a decent person, talking to you individually, whether it is communication, whether you know the mission, whether you are paid well—all those things combined, which is why we have gone after a whole spectrum of issues that come together that make the net workplace a positive place.

Senator VOINOVICH. Another thing that I would like to have from you—and maybe you could work with Mr. Chertoff—is to provide

a description of what TSOs and the Border Patrol do. You keep talking about connecting the dots, but what do you mean by "connecting the dots"? I mean, one of the things that I am thinking about is when dealing with terrorists, if they want to get through our security measures you do not want a pattern of how you do things. They watch the pattern. To keep from operating in a pattern, then you have to move people around, move them to different places, and so forth.

For example, at the Cleveland airport I recognize the screener, and the next time I go through the airport, I see them some place else.

There are some other things that I would like for you to describe for me. I understand that unions identify the many agencies with collective bargaining agreements, which has not stopped or prvented agencies from doing their work.

What I would like to know is, what benefits screeners would have if permitted to bargain that they do not have now.

Mr. HAWLEY. On that one issue—and I did cover this in the classified briefing, but an example would be if we get intel overnight or early in the morning and we want——

Senator VOINOVICH. Mr. Hawley, just one other thing. Can you move people from one job, say working the gate or the metal detector, to doing another job? Do you have the freedom to move them around to different responsibilities?

Mr. HAWLEY. Totally. They are completely—we move them everywhere. We move them from checked bag, passenger checkpoint, to screen employees in the back, to do document verification. You can progress up and do behavior observation.

We move them around all the time, and the problem here is that under collective bargaining we would be subject to arbitrator and complaint that, "Hey, you moved me for a non-valid reason. I am tired of being asked to do this," or "This does not make sense to me." And if we have, as we frequently do, classified reasons for wanting to do it, we are not able to make sense to somebody who is trying to be an arbitrator outside of the government. So that is one thing.

Believe me, anything that is a security interest, we are going to move and take care of it. The problem is after the fact going back and trying to convince arbitrators that—at 400 airports that this made sense. It just opens us up to an incredible morass of non-value-add.

Do you want me to answer some of the other——

Senator VOINOVICH. Well, I am out of my time, but if we can take one answer, then—OK?

Chairman AKAKA. Yes.

Senator VOINOVICH. Yes.

Mr. HAWLEY. Well, the first thing is our TSOs would get a bill for $17 million of dues that they do not have today, and they would lose the ability to negotiate directly, to communicate directly on these issues with management, including personally to me and everybody between me and a front-line TSO. And I think that is absolutely critical for any kind of performance organization, as you know. And connecting that communication to performance and strategy, all those things, we are able to act as one unit across the

entire United States. And we can flow people from not only checkpoint to checkpoint, but airport to airport, or support other people off-airport. And that flexibility is a critical piece that depends on people working together and communicating. And to set up a blockage environment where we have to go through and file a process and a notice when we make a performance change is just not going to happen, and then we are subject to the arbitration after the fact.

So I have grave concerns at our ability to move and sustain our security strategy.

Senator VOINOVICH. Thank you.

Chairman AKAKA. Thank you very much, Senator Voinovich. Senator Coburn.

Senator COBURN. Thank you. I will be brief, and I will not use all my time because I want our other guest to have time to testify and have questions.

I want to try to encapsulate this. If the American public is listening to this testimony today, from what I have heard you say, you are in full emergency mode all the time. That is what protecting air traffic is all about. That is what screening and security at our airports is all about. It is to assume that we are in an emergent situation all the time. Is that correct?

Mr. HAWLEY. That is absolutely correct.

Senator COBURN. And so let's say you have new intel that requires you to do something, and you are unionized, and then you have arbitration after the fact. You cannot use, you cannot divulge classified information to someone or the reason why you would do it without disclosing our classified information. Is that correct?

Mr. HAWLEY. That is correct.

Senator COBURN. So I am going back to the other point. I saw a reaction to your $17 million quote, but $30 a month times 12 months a year times 41,000 screeners comes real close to $17 million, in my estimation. They are not going to negotiate for wages, but they are going to negotiate everything else that has to do with running security at the airports on an on-emergent basis all the time.

Mr. HAWLEY. Yes, sir.

Senator COBURN. I think the case is closed. I will yield back.

Chairman AKAKA. Thank you very much, Senator Coburn.

Mr. Hawley, let me correct something that you said. An employee makes a choice as to whether he or she wishes to join a union. No one pays dues unless the person voluntarily chooses to join a union. When I asked you if you included union representation in developing your pay-for-performance system, you said you did not want employees having to pay union dues. Are there any circumstances in which you believe discussions with unions would be beneficial to TSA and its employees?

Mr. HAWLEY. If we lacked the ability to communicate with our employees, I would say it is something that you would have to look at. But we have employee councils all over the United States at our airports; 91 percent of our workforce in some way is covered with our employee councils. And we already did all this without the need for a union.

My point is that, with due respect to unions and the union workers—I mean no disrespect to that. But for our workforce and our

ability to move fast and change our mission and stay up with terrorists, we do not have time to set up a process where we go and give notice and find other people and try to convince them and I have got to go hire lawyers to talk to their lawyers. That is a waste of time. We have direct communication with our employees. We have rolled all this out in a year. And I would say to any organization, union or non-union, try to meet that performance. And I would also say for our TSOs, for what they have done over the last year, they have done an outstanding job, and I do not want to break up that relationship that we have that is direct communication, where we are able to move on behalf of the traveling public and address—I think Senator Coburn said it exactly right. This is an emergency, and I put in my statement that we know of terrorist interests in attacking U.S. aviation, we know of attack planning, we know of attack training, and we know of terrorists moving, coming in our direction. And in an unclassified environment, I do not know how to say it any clearer.

Chairman AKAKA. Mr. Hawley, one of the primary complaints I have heard from TSOs is that Federal Security Directors (FSDs), who are in charge of each airport, have different ways of interpreting and implementing TSA policy directives. As a result, TSOs are not treated consistently from airport to airport.

Do FSDs have the authority to change personnel policies or standard operating procedures from those issued by TSA?

Mr. HAWLEY. That is one of the great strengths of TSA, is that we have strong FSDs. As you know, all over the United States and in communities of vastly different characteristics, we have TSA checkpoints. So we have to have a fair process, but one that has the flexibility. And we now go to local hiring where our TSOs get to actually engage with people who are thinking of coming on board TSA as opposed to getting one national agreement that hires kind of a manufacturing process whether they fit or not.

We have local hiring, we have local authority, we have all of the ability to move and flex to meet the local standards. And I am sort of caught between because if we have a union, we have one agreement for the whole United States, that just does not work for our varied workforces. And if we have 400 unions, how the heck are we going to have a unified security system?

So I think that the system we have now is a real plus to have the FSDs have that flexibility.

Chairman AKAKA. Mr. Hawley, TSA has an internal board called the Disciplinary Review Board (DRB), to adjudicate employee appeals of adverse actions. Approximately how many cases per year are filed? And how many are found in favor of the employees?

Mr. HAWLEY. I do not know, but we would be happy to provide it for the record.

Chairman AKAKA. Would you please do that?

Mr. HAWLEY. Certainly.

Chairman AKAKA. And who sits on the DRB? How are members selected? And what training do they receive?

Mr. HAWLEY. They do have training, and I will have to get you the full list. I do not, because I am part of the appeal process. And we have a principle of trying to get as much peer review as possible, and, in fact, at several of our airports, a TSO who is subject

to a disciplinary proceeding can, in fact, pick the people who will sit on his or her review board. So it is a peer review of TSOs by TSOs, and I think that is a very progressive way to go, and that is the direction I would like to take the organization.

Chairman AKAKA. Senator Voinovich, do you have questions?

Senator VOINOVICH. I have no further questions, no.

Chairman AKAKA. Senator Coburn, do you have questions for the next panel?

Senator COBURN. Yes.

Chairman AKAKA. Well, with that let me insert my other questions into the record.

I want to thank you again, Mr. Hawley, very much for your testimony and responses to our questions. As you know air transportation is very critical to Hawaii because of the tourism industry and its geographic location so it is important for TSA to be working well. I thank you for your statement today, and I look forward to continuing to work with you. Thank you very much.

Mr. HAWLEY. Thank you, Mr. Chairman.

Chairman AKAKA. I would like to ask the second panelist, John Gage, to come forward. Mr. Gage is the National President of the American Federation of Government Employees who has been active in seeking increased employee protections for TSA screeners.

As you know, it is the custom of the Subcommittee to swear in all witnesses. Please stand and raise your right hand. Do you swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. GAGE. Yes, Senator, I do.

Senator AKAKA. Mr. Gage, please proceed with your statement.

TESTIMONY OF JOHN GAGE,[1] NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. GAGE. Yes, thank you, Mr. Chairman, Senator Voinovich, and Members of the Subcommittee, for the opportunity to testify. I am accompanied by two TSOs from Cleveland Hopkins Airport: Joe Gattarello from Lakewood, and Karen Budnik, lives in Grafton, Ohio. They have been AFGE supporters since the inception of TSA.

I am proud to say that AFGE has been aggressively fighting for the civil service and collective bargaining rights of TSOs since the debate creating TSA began in 2001. At the request of TSOs, we filed our first representational petition at BWI in November 2002. A few months later, James Loy, announced that the agency would not permit collective bargaining, prompting us to file suit in U.S. District Court. Citing the obscure footnote in ATSA which granted the Under Secretary unfettered discretion in setting the terms and conditions of employment, the case was dismissed. Nevertheless, AFGE responded to TSO complaints and has tried to represent them through the very limited venues available, such as the TSA Disciplinary Review Board, the Office of Workers' Compensation, and the EEOC. But these are not meaningful alternatives to a fair grievance procedure that these American workers deserve.

[1] The prepared statement of Mr. Gage appears in the appendix on page 83.

The House passed the 9/11 Commission recommendations with the provision that would grant TSO their fundamental and long overdue rights. Tomorrow, as you know, the Senate is expected to vote on this matter, and I hope that it will put an abrupt stop to this unwarranted abrogation of workers' rights. I want to thank Senator Lieberman and Senator McCaskill, both stalwart defenders of our national security, for their leadership on this matter.

The most insupportable inequity for TSOs is the denial of the right to engage in collective bargaining. Mr. Hawley says 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. Because TSA has no legal obligation to even talk to employee representatives, much less engage in collective bargaining, the TSO's right to union representation is non-existent. It is only through collective bargaining that management has a legal obligation to listen to employee concerns and work through issues collaboratively.

The range of issues over which TSOs seek to bargain is routine. The issues include the following: A fair promotion system, availability of flex time, overtime, health and safety improvements, parking, child care, and public transportation subsidies. Anyone who works for a living and anyone who has struggled to balance work and family responsibilities knows that these are the everyday items that can make all the difference in reaching that balance. And when these real day-to-day issues are resolved, the result is a strong loyal workforce.

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 resource system. They do not want to continue to suffer the shameful reprisals of agency management as doomed individuals. They do not want to continue to work in an atmosphere of coercion and intimidation.

The employees' experience of managerial inconsistency and arbitrariness has brought them by the thousands to the conclusion that they need a voice at work, with the structure and protection of a legal collective bargaining system. And, yes, they want a contract so that supervisors no longer make it up as they go along, engage in favoritism, arbitrary decisionmaking, and a stubborn unilateralism that wreaks havoc with their lives. What they want and deserve is as American as apple pie. What they want is to be treated with respect and dignity, and TSOs recognize that collective bargaining is the best means to bring dignity, consistency, and fairness to the workplace.

They are not asking for rights that go beyond those currently granted to Federal employees, and despite the apparent misconception of 34 U.S. Senators, they are not asking for the right to strike.

Let's look at some facts, and I want to bring up what Senator Akaka did, this Capitol Hill Police contract. It is very interesting.

Opponents of collective bargaining rights for TSOs invoked September 11, 2001, as if the lesson of that terrible day were to deprive Americans of their rights at work. Thousands of Federal employees and other unionized public employees are engaged in crit-

ical law enforcement and national security work, and they bargained contracts with their agency managements both before and after September 11. The collective bargaining agreement between the U.S. Capitol Police and the Fraternal Order of Police 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. That contract includes language which reiterates current law and regulation regarding the right of managers to act not only in the context of emergency but security-related positions and even staffing shortages.

There is nothing in this language to which AFGE would object. The exigency language eliminates entirely the arguments advanced by those who claim that such rights would undermine management's ability to act, especially to act to prevent a crisis. Despite the heightened concerns about security and union representation, the 2003 contract negotiated by the Capitol Police is quite similar to the standard agreements AFGE has with numerous Executive Branch agencies, including the Border Patrol, other DHS agencies, the Department of Defense, and the Bureau of Prisons. The police officers' contract refers frequently to the provisions of the Federal labor relations statute. And I must say, Senator, that when you talk about the mission of an agency, every agency has a different mission, and you bargain within the context of that mission. This contract on assignment of work, on transfers, on security, on leave, all have provisions in there where management can say that the mission—or there is something going on, a situation, and they can simply suspend virtually every article in this contract that comes down to assignment of work. And that is the same type of mission that we would be dealing with when we would bargain a contract with TSA.

The subjects bargained are virtually identical. The Capitol Police contract addresses promotion plans, daycare, health and safety, overtime, hours of work, leave, a fair grievance procedure—all things that are standard to a typical AFGE contract. So what is the difference? All the employees in DHS, the Capitol Police, DOD, and elsewhere have these rights. TSOs serve alongside with thousands of other workers whose responsibilities include protecting our homeland, and those other workers are unionized.

The 2002 enactment of ATSA that created TSA and federalized the duties of screening passengers and baggage at airports 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. And look at the results: Highest injury rates, illness, and lost time rates in the government. TSOs' overall attrition rate is more than 10 times higher than the 2.2-percent attrition rate for Federal civilian employees and upwards of 40 percent at some major airports. And, of course, by the OPM survey, they have the lowest morale of any employees in the Federal Government.

Since the inception of the agency, TSOs have demonstrated their patriotism and their commitment to the work and the safety of the American public. And before September 11 and since, the American labor movement has also demonstrated our patriotism and commit-

ment to our national security because we are the firefighters, the police, the Border Patrol, the emergency medical technicians, and TSOs who protect our homeland every day.

We urge the Senate to recognize that because the responsibilities are so similar to those of other public safety officers with full labor rights, TSOs deserve the same civil service and collective bargaining rights. It will help the employees, to be sure, but the benefit to the American people will be enormous. Please, give them their union. Let them build the teamwork and camaraderie necessary to do the job. We will all be safer as a result.

Thank you, Senator.

Chairman AKAKA. Thank you for your statement, Mr. Gage.

In his statement to his TSOs on Wednesday, Assistant Secretary Hawley said that collective bargaining would delay changes to standard operating procedures, the introduction and pilot testing of new technology, the ability to introduce additional security functions, and implementation of career path and advancement opportunities.

What is your response to Mr. Hawley's statement?

Mr. GAGE. Senator, there is no basis in fact. When we bargain a contract and we put down some basic rules for employees, this is all in the context of the mission of that agency. There is not the same mission in a VA hospital that there is with the screeners. There is not the same mission in HUD as there is in DOD.

Management under the law can exercise their rights according to their idea of the mission of the agency. So to say that screeners might have to be moved from Newark to New York, this could be done on a moment's notice. There is no bargaining obligation when it becomes a mission-critical issue.

So when we hear that having a voice at work, having collective bargaining rights is somehow going to affect the national security of this country, I really take offense to it, Senator. It has never happened in 60 years. It has never happened at any of our agencies through world wars, through every calamity that has happened to our country. And to say that now giving rights to these screeners is going to affect national security and using trumped-up reasons, people—I think some of these people have never seen a contract—and the true management rights that the agencies have on each of these critical issues.

Chairman AKAKA. Mr. Gage, TSA argues that it has instituted programs that drastically cut the number of workers' compensation claims and discrimination claims before the EEOC. In addition, TSA claims morale has improved dramatically.

Given the progress TSA has made, why then do you believe it is necessary to change the way TSA's personnel system operates?

Mr. GAGE. First of all, I do not agree with that, Senator. We have had over 4,000 TSOs contact us with expressions of interest that they want a union and they wanted to join our union. This is only in the last several weeks.

Now, when I hear Mr. Hawley say that there has been one we believe complaint—one in an agency of 40,000 people, one in 6 years—that shows to me that people are afraid to come forward. And when you say that EEO complaints have gone down, EEO is probably the only viable forum that employees have. But many of

their issues are not really subject to EEO. They should be handled in a fair grievance procedure. So many of the EEO cases that were filed originally by employees just looking for a forum, any forum, went into EEO, were dismissed, were really not discriminatory cases. They are basic cases of fairness and equity in a worksite that should be handled by a grievance procedure.

So I do not think there has been the improvement. That is not what I am hearing. I guess this is anybody's opinion. Mr. Hawley can have his, and certainly from the screeners I talk to, I can have mine.

Chairman AKAKA. Mr. Gage, TSA argues that collective bargaining will impede its ability to move personnel as needed to respond to threats in a timely fashion. You mentioned this earlier, but do you have any further response to that?

Mr. GAGE. Well, it is just not true, Senator. It is just not true. And we see all these arguments that are coming forward against basic worker rights to have a voice at work.

There is no way that this union or any of our TSOs, many of which are veterans, would ever stand up and say, no, we are not going to respond to a management initiative or a management change that was necessary. It is just not in the law. It is not in our contracts. It is not in reality.

Chairman AKAKA. Mr. Gage, you mentioned that Capitol Police have a flexible bargaining agreement. Mr. Hawley said that TSOs are different from other law enforcement officers. Do you agree with that?

Mr. GAGE. Yes, I do. They are all different. Our DOD is different than law enforcement, our Bureau of Prisons, our ICE officers. And it is very interesting that we are going to the table in 2 weeks on ICE and on CIS. But you have to take—and that is what bargaining is. You have to accept the mission of the agency and bargain within the context of that mission.

So, yes, many of our contracts, in fact, are different because the missions of the agencies are not as restrictive as they would be, for instance, in national security. But employees still can be afforded a collective bargaining right, and they can still bargain a fair grievance procedure, merit promotion issues, health and safety, without coming anywhere close to impeding the mission of this important agency.

Chairman AKAKA. Mr. Gage, Mr. Hawley said that TSOs are satisfied with the TSA pay-for-performance system. Do you agree with that assertion?

Mr. GAGE. I think that is probably the biggest issue of concern for TSOs. They do not know how it works. They do not think it is fair. They do not believe in it. It is not a motivator. And despite what Senator Voinovich thinks about the pay-for-performance, I think this system needs a heck of a lot more employee input.

Chairman AKAKA. TSA claims that administrative costs for allowing collective bargaining for TSOs would at a minimum be $160 million in order to hire labor relations specialists and negotiators and train employees and management on these issues. TSA further claims that amount would be equal to removing 3,500 front-line screeners and cause enormous passenger delays.

What is your response to this claim?

Mr. GAGE. I just do not know what to say about that, Senator, that it would cost that much money. At other agencies it certainly does not cost that much money to bargain a contract. At some agencies we do it in a couple weeks. It is just incredible that anybody would say that it is going to cost this agency $160 million to bargain a labor agreement.

Chairman AKAKA. Thank you. Senator Voinovich.

Senator VOINOVICH. Thank you, Mr. Chairman. We respectfully have a different of opinion on pay-for-performance.

Mr. GAGE. Yes, we do.

Senator VOINOVICH. And I am going to be very interested to do some further work and surveying of the people in TSA to find out how they feel about it. I think that it has a good way of motivating people to do a better job and reward those that are working harder.

Obviously, if this provision passes, the collective bargaining—or not the collective bargaining but the pay-for-performance would go out the window.

Mr. GAGE. Why?

Senator VOINOVICH. Well, I mean, you do not like pay-for-performance. You have pretty well said that you do not like it.

Mr. GAGE. Senator, management has the right to set the performance evaluation system, the tiers of it, and how it is going to be used. We can bargain some fairness and equity issues, but that is not true to say pay-for-performance would go down the tubes if we had collective bargaining. It is simply not true.

Senator VOINOVICH. Do you have pay-for-performance any other place where you represent workers?

Mr. GAGE. Probably. But pay-for-performance is really a new thing that has come in only in the last few years. We are going to be bargaining, see what they have to say in ICE and CIS and the other places in the Department. DOD, we stand ready—even though we are challenging the labor relations part of it in court, they are moving forward with the pay-for-performance, and we will stand ready to go to the table with it on that. But there is nothing to say that collective bargaining, I can go in there and say, no, we are not going to have pay-for-performance. Our rights do not go that far, Senator.

Senator VOINOVICH. Well, I can just tell you that the position that your union is taking has been against pay-for-performance.

Mr. GAGE. That is true. It has.

Senator VOINOVICH. And I just want to make it clear that the dues are $30 a month. Is that right?

Mr. GAGE. No. Each of our locals sets its dues, and right now I believe the screeners—this is not even dues. They are paying us off a bank allotment. This is not dues check-off that we have in a unionized shop or a unionized—where we have recognition. They are just contributing money to our fight for their rights off a bank allotment, and it is $7.50 a pay that the supporters of AFGE are contributing.

Senator VOINOVICH. This is in Cleveland that they pay $7.50. Is that right?

Mr. GAGE. Correct, yes. And that money is not being used for other union activities. That money is being segregated outside even of our constitution, only to wage the fight for screener rights.

Senator VOINOVICH. Well, the thing that I would like to have is the same question that I asked of Mr. Hawley. What would collective bargaining give workers at TSA across the country that they do not have right now?

Mr. GAGE. I think that we would—first of all, when they think there is a fair process, a grievance procedure, I think that really has people—gives them a little more hope and a little more faith and a little more security. But if you look at our contracts, Senator, and what we go on, our health and safety, where we would have a committee of employees and we would address health and safety issues, our merit promotion is very important.

Senator VOINOVICH. Are you saying that health and safety—one of the things that I was impressed with that Mr. Hawley presented was this chart right here,[1] including days absent from work due to injury decreases due to nurse case management, from 45 days to 20.5 case. Wouldn't you say that this is an effort by the agency to try and be responsible and try to work to make it better.

Mr. GAGE. I certainly hope so.

Senator VOINOVICH. The other thing that he showed was TSO voluntary attrition rate versus Border Patrol agents and private sector.

Mr. GAGE. I do not agree with that statistic. I do not know what "voluntary" means there. And I know we just checked with our Border Patrol, and there is a 5-percent attrition rate at our Border Patrol.

Senator VOINOVICH. I would like you to take these statistics and get back to me to show how it is different. There is too much disagreement on the private sector data and sources, 29 percent for transportation warehousing; utilities, 24 percent; the Border Patrol agents full-time, 21.2 percent; Federal Government, 17 percent. TSA claim that full-time TSOs are 12.6 percent. Now, they have part-time workers. But I would like to see what your information is.

Mr. GAGE. Yes, sir.

Senator VOINOVICH. Do you agree with Mr. Hawley that there is a difference between the Border Patrol and the TSOs?

Mr. GAGE. Yes, sir.

Senator VOINOVICH. And any argument you would negotiate would be different because of the different environment.

Mr. GAGE. Of course. We negotiate differently than Social Security, Border Patrol, VA, across the board. Each of these agencies has their own critical missions, and you have to bargain within the context of it.

Senator VOINOVICH. So you do agree that they are in a different kind of environment than the Border Patrol or other divisions of DHS?

Mr. GAGE. Yes. I would not go to evaluate the level of national security that each of these very valuable workforces maintain. I do not know——

Senator VOINOVICH. How about jurisdiction? That is another one I am interested in.

Mr. GAGE. Jurisdiction?

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[1] The chart referred to appears in the Appendix on page 98.

Senator VOINOVICH. Jurisdiction being where I work. I am a screener, and under a collective bargaining agreement would mean that you would negotiate to keep individuals assigned to one task or function of a TSOs current job responsibility?

Mr. GAGE. Senator, that is so routine in just about every agency, especially these days of staff shortages. I mean, our people are very versatile. Of course, they do more than one job. Our people expect it in virtually every agency, or different parts of a job, and that is clearly—if anyone thinks that they would have to come to the union before they put a TSO on the exit lane or on the x-ray—it just would not happen.

Senator VOINOVICH. But do you have the ability to require certain jurisdiction, the job function?

Mr. GAGE. No, Senator. It really is a fabrication. None of our agencies have a job classification that would prohibit management from assigning you on a day-to-day basis or any other basis to a job that needed to be done.

Senator VOINOVICH. How about emergency situations and negotiations after the fact or challenging whether it is an emergency?

Mr. GAGE. No, that is not true either. Management has the right even on issues less than emergencies if it is something critical. But let's say someone really does get screwed in a deployment of people. I think to come back and talk about it after the fact and if you can make that person whole, what is wrong with that? That is what American workers deserve.

Senator VOINOVICH. Do you know what the experience is with the Border Patrol?

Mr. GAGE. The Border Patrol is very good. We have had them for 40 years, and I do not think we have ever had a situation where people said, "No, I am not going, and my union contract says I do not have to go."

There are deployments that are done routinely in all of these agencies in DHS, as well as DOD. And I cannot think of any and I know there are not any where a union contract has stopped a deployment when an agency says it is a mission issue and we have to do it.

Senator VOINOVICH. And there are not that many instances of arbitration after the fact?

Mr. GAGE. There really are not. If I sat here long enough, I probably could think of a couple, but none jump to my mind. The relationships that we try to have with agencies is one that we want this agency to be successful. We do not want to be tangling with them and putting them in the news and everything. We want them to be successful, and we want the workers to have a fair shot, though, and to be treated fairly. So it is not like we are going in there and going to try to throw nuts and bolts into the operation of this agency. We understand how critical it is.

Senator VOINOVICH. Thank you.

Chairman AKAKA. Senator Coburn.

Senator COBURN. Yes, sir. Mr. Gage, thank you for coming before us today.

Mr. GAGE. Thank you, sir.

Senator COBURN. Tell me what "stubborn unilateralism" is.

Mr. GAGE. Well, I think that when you see—you are going to training, I am retiring next—I saw this at DHS, and I will just use it. I have not seen this in this particular thing. But there was a guy who was down in Dallas, and he says, "John, they are sending me to training on the customs side of the house. It is a 13-week training. I am retiring in 4 weeks. I am trying to train the guy who is replacing me, and I cannot get it across to management that this is really a stupid thing to do."

Senator COBURN. I know, but we are not talking about them. We are talking about TSA.

Mr. GAGE. Well, we do not represent them.

Senator COBURN. But where is the stubborn unilateralism that you referred to in TSA? Those are your words. I am giving you your words back.

Mr. GAGE. I think those are things that, when we want to—I think the whole framework of this arbitrariness, really, is coming to us in the words of our screeners: "How does the pay work? Why did I only get this?" "Well, we do not have to tell you. Bye." And it is a "my way or the highway" perception that I am trying to get across to you, Senator.

Senator COBURN. Have you seen any improvement over the last few years in TSA?

Mr. GAGE. Yes, sir.

Senator COBURN. So they are responding to some of the problems that they have been faced with starting in 2002.

Mr. GAGE. Well, I hope so. There are about 35, 40 percent——

Senator COBURN. I am not sure anybody in this country could have set up that kind of organization in a short period of time without a great deal of difficulty.

Mr. GAGE. That is true.

Senator COBURN. The fact is that they have made great improvements.

Mr. GAGE. Senator——

Senator COBURN. Let me finish.

Mr. GAGE. Yes, sir.

Senator COBURN. This chart is based on G–5 to G–7 rankings,[1] and it is accurate for the Border Patrol, G–5 through G–7. That is the reference. So from G–5 to G–7, TSA actually has less attrition rate than the Border Patrol does.

Now, granted, that is entry level. I understand that. But the point is that says they are now making good improvement on the people that are coming in for training and keeping them. The fact is that the Federal Government has the lowest attrition rate of anybody in the world. We have the best benefit packages. The benefit packages in the Federal Government beat anything inside Oklahoma. You cannot get a job with the kind of benefit packages that the Federal Government has. That is wonderful. We should have the best paid and the best benefit packages. But to say that they have not improved, they have made marked improvements in all the areas of concern. And the fact is that it will be interesting to hear if you can bring to me other whistleblower actions that

[1] The chart referred to appears in the Appendix on page 97.

have been made other than the one that they talked about, because I am surprised that there is only one.

Mr. GAGE. I am amazed.

Senator COBURN. I am, too. So I think that is very important for us to have the right information, because if, in fact, they are improving, it ought to be recognized rather than to say that there is stubborn unilateralism, which are your words that you implied to the TSA.

Mr. GAGE. Yes.

Senator COBURN. The screeners that I talk to in Tulsa and Oklahoma City—and I fly twice a week back and forth either through Chicago or Dallas. I am not seeing that.

I am not saying that there is not a large need for improvement there and lots of other places in the Federal Government. As a matter of fact, I am a champion for efficiency and improvement. But to not recognize the marked improvements that have come about through TSA and to not—and I am a big believer, I am with Senator Voinovich: Pay-for-performance works everywhere except where we will not let it work and then we are not as efficient. And the question that we should have on pay-for-performance and that you all raised: Is it fairly administered? Is there confidence in it? It is not whether pay-for-performance works. We know it does. The question is whether it is fairly administered or not?

So we should be embracing pay-for-performance, and we should be embracing the fairness under which it is administered.

Mr. GAGE. Senator, here is my one disagreement with you.

Senator COBURN. OK.

Mr. GAGE. Whether they are improving or not, that does not negate the right of workers to organize and have a voice at work on their terms. Collective bargaining——

Senator COBURN. It does when it concerns the national security and transportation security of this country. And you just heard him say they run that like there is an emergency every day. If we are going to work—I do not want them spending one minute worrying about a shop steward when my wife or my family or Senator Voinovich's family is getting on an airplane. That should be the last thing that anybody in management in TSA should ever even be thinking about.

And the point comes that it is not all as simple as you make it, because what happens is that once there is a mission-critical decision and you all have a contract, I guarantee you that tons of time is spent second-guessing it, arbitrating it, and then working on it after the fact. And that occurs every day in the areas that you represent in this Federal Government.

Mr. GAGE. Senator, these are rights. They should not be taken away lightly. In fact, I think these workers should receive the benefit of the doubt—not because someone—and from what I have heard Mr. Hawley talk about collective bargaining—he has his job, I have mine. But I do not think you can just say that they have made some improvements——

Senator COBURN. I am not saying that. We are not saying that.

Mr. GAGE. There is somebody's bogus national security issues——

Senator COBURN. What we are saying is: Whose rights come first? The American public and the right to have the most efficient, most flexible, most secure transportation system in the world——

Mr. GAGE. I agree, sir, and that would include collective bargaining.

Senator COBURN [continuing]. Or a union who is quoted as saying, "We have got to gain 40,000 members a year to break even today, but because of the age of our members and pending retirement, that number will go to 50,000. As a matter of fact, the campaign is the perfect opportunity to convince TSA employees to join their union become active as volunteers in our great union."

Mr. GAGE. What is the matter with that?

Senator COBURN. The rights of Americans to have a secure, fast, safe, and reliable security system at the airport is the No. 1, right.

Mr. GAGE. Correct.

Senator COBURN. And that is not exclusive and does not exclude the right of the valuable TSO officers we have today. But it does not mean that those rights should ever come in front of the others.

Mr. GAGE. I agree with you, Senator. I think they can operate very well together: Collective bargaining rights for the workers, and that agency performing excellently its national security obligations. I do not see these as the point-counterpoint that you do, Senator.

Senator COBURN. Well, I do.

I will yield back.

Chairman AKAKA. Thank you very much, Senator Coburn.

I want to thank you again, Mr. Gage, and also Assistant Secretary Hawley, for being with us today to provide additional information on the proposal to provide TSOs with employee rights and protections. I am confident that today's hearing will contribute to the current Senate debate over the personnel system for TSA screeners.

I ask at this point unanimous consent that an editorial in today's *Washington Post* on TSA collective bargaining be included in the record.[1]

I want to thank you again and thank the Members who were here. The hearing record will be open for one week for additional statements or questions other Members may have.

With that, the hearing is adjourned.

[Whereupon, at 4:30 p.m., the Subcommittee was adjourned.]

[1] The article appears in the Appendix on page 111.

APPENDIX

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

March 5, 2007

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.

Question#:	1
Topic:	TSO discipline
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: As you know, when a Transportation Security Officer (TSO) is disciplined by a suspension for less than 15 days it is handled within an airport. There is no outside or independent review.

What steps has the Transportation Security Administration (TSA) taken to ensure that the discipline given to employees at airports is consistent with TSA policy and has not been arbitrary, capricious, or retaliatory?

Response: Local management has the authority to issue decision for discipline for suspensions for less than 15 days, and Transportation Security Administration (TSA) policy requires prior coordination with the agency's Human Capital Employee Relations staff and field counsel to ensure that the proposed action is procedurally and legally sufficient. Once this determination is made, management may proceed with the action. The manner in which the action was developed and the due process provided to the employee are also part of the review process if an appeal is filed. Employees may grieve these actions. The grievance process goes first to the first supervisor with authority to resolve the grievance. It can then be appealed by the employee to a higher level official than the first-level supervisor with the authority to resolve the grievance. This is similar to Title 5 grievance process. In addition, TSA has developed a "peer review" process to substitute for the second-step of the grievance process. The peer review process is a localized appeals option available to TSA employees to ensure fair and impartial review of management actions involving discipline and other workplace grievances. Employees may elect peer review of these matters or a formal dispute resolution process.

TSA recently completed a study of suspensions of 14 days or less. A sample of 10 percent of the suspensions of 14 days or less imposed in fiscal years 2005 and 2006 were examined; most of them were on Transportation Security Officer (TSO), Lead TSO, or Supervisory TSO employees. The study concluded that TSA policies were followed. There was sufficient evidence to support the reasons for the actions and the penalties in all cases were within the range of authorized penalties. There was no indication in the employment actions or any ensuing grievances that the actions taken were arbitrary, capricious, or retaliatory.

Question#:	2
Topic:	airport management training
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: What training do airport management — Federal Security Directors (FSDs), Assistant Federal Security Directors, Screening Managers — receive to ensure that they understand agency policy on disciplining TSOs?

Response: Screening Managers and Supervisory Transportation Security Officers (STSOs) attend a 90 hour first-line supervisory training course titled *Foundations of Leadership* that includes topics such as Managing Conflict, Coaching Skills, and Managing Performance and Conduct Issues. The Managing Performance and Conduct topic is covered in two specific segments: a self-study course entitled Basics of Employee Relations, and one full day of classroom training entitled Managing Performance and Conduct Issues. Both segments deal specifically with Transportation Security Administration's (TSA) policies on disciplining employees. The classroom segment of the course is instructed by Employee Relations Specialists from the Office of Human Capital at TSA Headquarters.

The specific agency policy that is covered is as follows:

Pre-course self-study topics include:

- Performance vs. Conduct
- Managers' responsibility to address issues; employees' responsibility for the outcome
- Interest-based vs. Rights-based approaches
- Resources available to help
- TSA's Leadership Problem Solving Model
- Identifying and Assessing an Incident
  - Participants are given, and required to use, the Charges and Authorities Chart, identifying the TSA policy or directive that relates to each offense, including offenses related to attendance, alcohol and drugs, ethical violations, grooming and uniform standards, model workplace violations, safeguarding and handling Sensitive Security Information, Classified and For Official Use Only information, safeguarding public funds, safety, screening and security-related offenses, violation of law, policy or regulations, criminal conduct, use of Federal equipment, property and personnel, and use of government vehicles.

Question#:	2
Topic:	airport management training
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

  - Participants are given and referred to Management Directive No. 1100-73-5, Employee Responsibilities and Conduct. They are asked to use it in conjunction with the Charges and Authorities Chart.
- Fact Finding
  - In this section, participants are referred to TSA Management Directive 1100.75-3, Addressing Performance and Conduct Problems, to determine if the offense is one that requires TSO removal for the first offense.
- Reviewing and Assessing the evidence
  - In completing the Evidence Checklist, students are required to consider the Douglas Factors.

All of these policies, Management Directives, and charts are provided as a separate Desk Reference for use on the job after the class is completed. Also included in this Desk Reference are checklists for Pre-decisional Discussions and Determinations, preparing and issuing Disciplinary Letters, the Two-Step process for suspension, reduction in pay or removal, the One-Step Process, a sample SMART agreement, Management Directive No. 110.77-2, Grievance Procedures, and Management Directive No. 110.77-1, the Disciplinary Review Board. Also covered in the pre-course module and practiced face-to-face in the classroom portion are conducting pre-decisional discussions and deciding on corrective actions.

In the classroom segment, Managing Performance and Conduct, participants practice applying the TSA Leadership Problem Solving Model to a variety of situations, identify and assess incidents, conduct fact finding, review and assess evidence (using the pre-determination fact finding and evidence checklists in the Desk Reference), observe and conduct pre-decisional discussions in small groups, apply corrective actions including SMART agreements, letters of counseling and disciplinary notice templates, and determine whether to use non-disciplinary and disciplinary approaches.

Since September 2006 (when the new course was first available) through April 2007, 1,256, or 21% of the target population of supervisors and managers have completed this training program.

A Level One evaluation is provided to course participants on their last day of class. The participants are asked to respond to 21 questions about the training program. Participants use a rating scale (one (1) being the lowest, or Strongly Disagree, and five (5) being the highest, or Strongly Agree) to provide feedback about the course content, delivery, facility, and training benefit.

Question#:	2
Topic:	airport management training
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

SECTION 6 - TRAINING BENEFIT	Tot. Complete Responses	STRONGLY DISAGREE	DISAGREE	CANNOT DECIDE	AGREE	STRONGLY AGREE	Mean Response
24. The training was relevant to improving the knowledge/skills I need to accomplish my job.	941	4	24	36	272	605	4.54
25. The practical exercises were good simulations of the tasks that I actually perform on my job.	939	11	35	55	303	535	4.40

In addition, in fiscal year 2006, the TSA Office of Human Capital provided training on managing performance issues, including guidance on disciplining TSOs, to more than 1,354 supervisors/managers, including Federal Security Directors and Assistant Federal Security Directors.

Question#:	3
Topic:	on the job injuries
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: Recently released Department of Labor (DOL) statistics show that during 2006 54,568 TSOs were injured on the job. The American Federation of Government Employees (AFGE) claims that the high injury rate among TSOs has contributed to both the high attrition rate and the inability of TSA to staff screening stations adequately. What is the TSA policy for assignment of light duty either following the return to work of a TSO from a work-related injury, or otherwise upon the recommendation of the worker's physician?

Response: The final Department of Labor Federal Injury and Illness Statistics for fiscal year 2006 reports 7,970 injury claims for that fiscal year. The 54,568 figure quoted in the question is actually the total number of Transportation Security Administration (TSA) employees, not the number of injuries. Of those claims filed, 4,336 resulted in lost time from work. This injury data is based upon total employment at TSA, including all workers at TSA, not just Transportation Security Officers.

TSA follows the Federal Employee Compensation Act guidelines for assignment of light duty. Employees occupying any TSO position must be able to demonstrate the statutory requirements (required by the Aviation and Transportation Security Act (ATSA)) for the position, which include physical ability and medical requirements, such as auditory and vision standards. Airports are expected to offer limited duty assignments for employees who have work-related injuries and have physical restrictions on the type of work that can be performed. If an employee is able to work, the supervisor identifies duties that can be performed within the employee's medical limitations. The light duty assignment is then presented to the employee and his or her physician. Light duty assignments must be supported by acceptable medical documentation that describes the temporary impairment or condition and the limitations it places on the employee's ability to fulfill the essential position requirements.

Airports use the Transportation Security Administration's (TSA) Nurse Case Management program to obtain clarifications from employees and medical professionals about the range of work restrictions and to determine whether limited duty can be offered. This proactive program has been recognized by the Department of Labor as a Government "Best Practice" and was nominated for the Harvard/Kennedy School of Government Program Innovations Award in 2006.

Question#:	4
Topic:	on the job injuries
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: Can you share with the Committee how many TSOs have been terminated because they have been unable to perform the duties of a TSO following a work-related injury?

Response: Since January 2004, to enhance the management between the Transportation Security Administration's (TSA) Office of Workers' Compensation Programs (TSA/OWCP) and the Department of Labor, all cases involving employees with approved OWCP claims that resulted in requests for injury-related terminations/removals were centrally tracked by TSA. Since TSA began tracking this information in January 2004, 302 requests for injury related termination were approved after coordination between TSA and the Department of Labor.

Question#:	5
Topic:	sick leave abuse
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: TSA's Absence and Leave policy states that "an employee suspected of abusing sick leave privileges through the use of unscheduled sick leave may be placed on leave restriction." The policy does not define "leave restriction" and does not offer any guidance as to when it may be appropriate. What effort has TSA made to review individual airport leave restriction policies to ensure compliance with TSA policy and compatibility with the agency's goals and mission?

Response: Only Transportation Security Administration (TSA) Headquarters may issue employment related policies. In the event that a TSA office or facility wants to issue internal procedures, the draft document must be submitted to TSA's Office of Human Capital (OHC) for review. This review is to ensure that the proposed document does not conflict, expand, narrow, or circumvent existing TSA policy. OHC has reviewed numerous documents to ensure that issues, such as leave restriction, are consistent and applied fairly and equitably.

Question#:	6
Topic:	TSO Advisory Council
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: You testified that the TSO Advisory Council provides TSA with direct recommendations and feedback on matters related to safety, human capital, training, technology, and other key matters.

What are some of the recommendations made by TSOs, and can you give three examples of recommendations accepted by TSA?

Response: The purpose of the National Advisory Council (NAC) is to serve as an advisory entity to the Assistant Secretary at the Transportation Security Administration (TSA) and Senior Leadership Team (SLT) on workforce issues in the field to promote greater job satisfaction and improve organizational effectiveness through enhanced communication, cooperative problem solving, and fostering innovation and replication of best practices. The NAC also helps provide potential solutions or approaches to issues with national implications. The Council has established a series of standing committees, such as: the Committee on Coordination, Committee on Governance/Membership, and the Committee on the Performance Accountability and Standards System. The committees work collaboratively over time with various Transportation Security Administration (TSA) offices to develop solutions to issues of concern to the field and to provide the field perspective during the development of new policies and programs. TSA leadership and the NAC communicate monthly via conference calls and quarterly during week-long meetings at HQ.

The NAC is composed of 55 members, and consists of an Assistant Federal Security Director-Screening Advisory Council (21 members) and the Transportation Security Officer (TSO) Advisory Council (34 members). The 34 member TSO Advisory Council (TAC) consists of 20 TSOs, 10 Lead TSOs, and 4 Supervisory TSOs, from across the Nation, and includes 4 members of the National Screening Force. TAC members were selected from 310 applications forwarded to TSA headquarters by the Federal Security Directors. The selection panel consisted of 9 field Integrated Conflict Management System coordinators (3 from each TSA operation area), and each candidate's application was reviewed and rated by three separate panel members based on: 1) contributions to workplace (20 percent); 2) knowledge, skills and experience that would benefit the Council (35 percent); 3) reason to serve (30 percent); and, 4) overall impression (15 percent). Final membership was determined from the highest ranked applicants and adjusted to ensure that members represented the overall TSO population with respect to

Question#:	6
Topic:	TSO Advisory Council
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

geographic location, airport size, gender, and diversity. Council members represent the three operational areas and airports of all sizes and serve as members for two years. The NAC Governance Standing Committee is defining a selection process recommendation for TSA leadership approval. The NAC has also established a Points of Contact (POC) Network that connects the national council to more than 200 airports and local employee advisory councils, covering more than 90% of the TSO workforce.

In addition to influencing the development of specific programs and policies through the close work between the NAC and various HQ functions, TSA has adopted a number of NAC recommendations. These recommendations include:

- **National Points of Contact (POC) Network**
The National Advisory Council (NAC) recommended to senior leadership that the Transportation Security Administration (TSA) create an advisory council National Points of Contact (POC) network to standardize the process for gathering field input on workforce matters of national significance. The network would also disseminate information and decisions from their quarterly meetings with TSA leadership back to the workforce. TSA accepted the recommendation and worked with the NAC to create a network that includes over 200 POCs at hub and spoke airports nationwide.

- **TSO Uniforms**
The Uniform Committee of the National Advisory Council reviewed TSA's Uniform and Appearance Management Directive and submitted recommendations to improve the professional appearance of the TSO workforce. The Uniform Committee analyzed 55 pages of input and ideas received from the field on uniform changes and provided a number of specific recommendations including the creating of a National Uniform and Standards Board. TSA leadership accepted these recommendations and is working towards establishing the National Uniform and Standards Board in May 2007.

- **National Safety Awareness Campaign**
The NAC Safety Committee recommended that TSA implement a quarterly National Safety Awareness Campaign to focus on specific workplace safety themes to reduce on-the-job injuries in the field. TSA accepted this recommendation and is convening a National Safety Awareness Working Group in April 2007 to develop this campaign.

Question#:	6
Topic:	TSO Advisory Council
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

- **Revisions to Standard Operating Procedures (SOPs)**

TSA accepted the NAC recommendation to better involve the TSO community in the review process of revisions to security SOPs prior to implementation. The broader involvement of field personnel ensures that SOP changes are clearer and better reflect the operational challenges associated with field implementation. The NAC now has a standing SOP Committee that collaborates with headquarters policy office personnel during each quarterly meeting. This structure also supports quick review of short-fused procedural changes needed to improve security, reduce on-the-job injuries, and enhance customer service.

- **PASS (Performance Accountability and Standards System)**

The NAC has had extensive dialogue with senior leadership about PASS both in terms of the details of implementation and the compensation associated with it. TSA adopted a number of key recommendations to strengthen the PASS program and remains actively engaged with the NAC with regard to the PASS program. One key change that resulted from discussions with the NAC was increasing the amount of performance bonus and base pay increase for employees that received a final rating of Role Model of Excellence or Exceeds Standards on the fiscal year 2006 evaluation.

Question#:	7
Topic:	collective bargaining
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: According to various statements made by TSA and Department of Homeland Security officials over the past weeks, the cost of collective bargaining with union representatives of TSOs could range anywhere from $150 million to $350 million. Please provide the documents that are the basis of these claims, including

The Budget Implications of Collective Bargaining documents referenced in your communications with TSOs;

Response: The Transportation Security Administration's (TSA) estimate of $175 million only includes the costs associated with developing the infrastructure necessary to support a collective bargaining environment. This estimate is based on the following:

Cost	**Description** (in millions)
80 regional labor relations specialists (4 regions with 20 specialist in each that are responsible for facilitating local grievance negotiations between the union and local TSA management to include unfair labor practices and Federal Labor Relations Act matters), 20 labor relations negotiators (responsible for researching, preparing, and negotiating the national labor agreement and supporting mid-term changes based on local conditions), 10 senior union officials and 960 Full-Time Equivalents (FTE) as union stewards based on the current ratio of union stewards to employees at Customs and Border Protection and the United States Postal Service.	$58.2M
Employee Relations Process and Program Management involve 34 FTE	$4.5M
Contractor support for labor relations and arbitration. Cost estimate includes: • Preparation for Collective Bargaining Agreement • Research, case preparation, unfair labor practice case law review, appeals, and negotiability	$22.1M

Question#:	7
Topic:	collective bargaining
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Cost	**Description** (in millions)
• Court Reporter fees • Arbitrator fees Costs assume that roughly three-fourths of the current annual grievance case load (2,400 of the total 3,200) will go to arbitration, with an average arbitration time of 24 hours per case at $250 per hour	
Job classification changes, hiring and recruiting process changes, and systems reprogramming	$17M
Training for manager/supervisors including: collective bargaining basic and advanced, collective bargaining, labor relations and grievances for 7,309 supervisors and managers, human resource (HR) specialist training for 600 field HR personnel, and employee training for 42,000 Transportation Security Officers. Costs include curriculum development, travel and per diem, lease of training spaces (where required), and training materials.	$54.2M
Facilities equipment and support for new FTE, union reps, legal staff, and travel. Included in this figure are: • Lease of 550 offices for field union representatives (4 per Cat X; 2 per Cat 1, and 1 for all other airports) and 2 offices at TSA headquarters for union officials • Travel and per diem costs for witnesses, labor negotiations and national level meetings • Additional parking and facilities costs associated with increased hiring needs associated with collective bargaining environment • 35 additional labor relations attorneys, plus contractor support	$19M
Total	**175M**

b. The number of TSA staff currently working in Labor Employee Relations by region;

Question#:	7
Topic:	collective bargaining
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Response: Currently, TSA does not have any staff working in Labor Employee Relations.

c. The number of TSA attorneys working on labor related cases;

Response: Currently, TSA does not have any attorneys working in labor relations.

d. The total number of TSA human resources staff.

Response: The current FTE authorization for TSA's Office of Human Capital is 183 FTE.

Question#:	8
Topic:	attrition rates
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: According to the February 13, 2007, testimony of the Government Accountability Office (GAO), the TSO attrition rate had fallen from 23 percent for full-time and over 50 percent for part-time TSOs in April 2006 to 16 percent for full-time and 46 percent for part-time TSOs. In testimony before the House Transportation and Infrastructure Subcommittee on Aviation on February 12, 2004, GAO pointed out that "attrition among the nation's more than 440 commercial airports is sometimes considerably higher" than the overall attrition rate. Airports such as Dulles International struggle with attrition rates that hover around 50 percent.

Please provide the attrition rate for the Fiscal Years 2002, 2003, 2004, 2005 and 2006 for the following airports.

Logan International
San Diego
Orlando
Dallas-Fort Worth
Miami International
Dulles
Pittsburgh
Las Vegas (McCarran)
Albany, NY
Phoenix
O'Hare
Seattle-Tacoma
Midway
Fort Lauderdale
Portland
LAX Washington National
Salt Lake City
Portland, ME
Atlanta-Hartsfield
Denver
Baltimore-Washington

Question#:	8
Topic:	attrition rates
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Newark

Response:
Transportation Security Officer Voluntary Attrition Rates at Specified Airports FY 2002 – FY 2006

Airport Code	Airport Name	FY 2002 Number Of Voluntary Separations (Oct. 1, 2001 – Sept. 30, 2002)	FY 2003 (Oct. 1, 2002 – Sept. 30, 2003)	FY 2004 (Oct. 1, 2003 – Sept. 30, 2004)	FY 2005 (Oct. 1 2004 – Sept. 30, 2006)	FY 2006 (Oct. 1, 2005 – Sept. 30, 2006)
ALB	Albany International Airport	9	23.5%	40.6%	21.2%	27.7%
ATL	Hartsfield Atlanta International Airport	8	16.4%	14.3%	16.7%	15.5%
BOS	Logan International Airport	34	20.2%	28.6%	20.4%	18.2%
BWI	Baltimore-Washington International Airport	46	25.3%	25.2%	19.7%	16.9%
DCA	Ronald Reagan Washington National Airport	17	25.1%	28.9%	29.0%	25.2%
DEN	Denver International Airport	20	29.4%	20.2%	18.0%	13.4%
DFW	Dallas/Fort Worth International Airport	21	15.6%	17.9%	15.7%	13.5%

Question#:	8
Topic:	attrition rates
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Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

EWR	Newark International Airport	21	19.9%	20.1%	19.0%	18.5%
FLL	Ft. Lauderdale – Hollywood International Airport	16	13.0%	18.3%	19.3%	26.4%
IAD	Washington-Dulles International Airport	4	35.1%	30.7%	30.3%	26.5%
LAS	McCarran International Airport	21	18.4%	19.3%	26.6%	24.8%
LAX	Los Angeles International Airport	2	12.9%	17.0%	17.7%	20.4%
MCO	Orlando International Airport	36	12.0%	16.5%	18.0%	14.7%
MDW	Chicago Midway Airport	7	13.4%	13.7%	18.2%	14.0%
MIA	Miami International Airport	1	10.5%	12.1%	12.6%	14.1%
ORD	O'Hare International Airport	28	15.8%	13.6%	15.7%	14.1%
PDX	Portland International Airport	2	13.6%	17.6%	14.0%	17.4%
PHX	Phoenix Sky Harbor International Airport	13	16.5%	17.2%	18.5%	23.6%
PIT	Pittsburgh International Airport	13	13.7%	13.1%	11.8%	4.5%
PWM	Portland International Jetport	2	21.9%	24.0%	19.3%	21.5%
SAN	San Diego International Airport, Lindbergh Field	0	25.1%	18.9%	20.5%	17.7%
SEA	Seattle-Tacoma International Airport	17	14.1%	20.9%	19.5%	17.5%
SLC	Salt Lake City International Airport	17	14.4%	12.2%	11.0%	16.2%

The number of voluntary separations is reported for FY 2002 instead of a voluntary attrition rate. This is because many airports were still in the process of staffing up in the second half of FY 2002 so it is not feasible to computer voluntary attrition rates that would be comparable to those for later years.

Question#:	9
Topic:	TSOs deployment
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: In previous statements you have said that collective bargaining would hamper TSAs need to deploy TSOs during times of crisis. Your statements have mentioned Hurricane Katrina, the United Kingdom explosives threat, and more recently, the severe Denver snowstorm. In regards to these three situations, did TSA:

Rely on volunteers for deployments? If so, how many TSOs volunteered to be deployed during each incidence, and how many did TSA eventually deploy?

Ever have a mandatory deployment?

Utilize its National Screening Force, whose job it is to fly-in to airports for temporary assistance with screening.

Response: The Transportation Security Administration (TSA) has two Transportation Security Officer (TSO) deployment capabilities: The National Deployment Force (NDF) and Transportation Security Officer Volunteers (TSOVs). Formerly known as the National Screening Force (NSF), the NDF is comprised of fully trained full-time TSOs who provide a responsive and flexible capability to augment passenger and baggage screening operations. NDF members voluntarily commit, for a period of one year, to being immediately deployable for indefinite periods. The NDF is deployed for screening support operations in response to airport's seasonal demands, special events, and other security-related emergency circumstances. TSOVs are TSOs who volunteer to deploy from their home airport for a limited time to accomplish specific but similar NDF type missions. TSOVs voluntarily support deployments that are normally less than 30 day duration and may be either part-time or full-time employees. We have not yet had to implement a mandatory deployment in which TSOs have been deployed against their will. The following is provided regarding the three situations in the above question:

- Hurricane Katrina Deployment: Nearly 300 TSOs augmented the local New Orleans screener workforce. Approximately 240 TSO volunteers deployed from airports in Florida, Texas, and 52 TSOs deployed from the National Screening Force. With only a few hours notice, these TSOs were deployed from their home airports on FEMA-chartered flights. NSF TSOs and TSO volunteers remained

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deployed to New Orleans augmenting the New Orleans screener workforce for nearly a month.

- Denver Snowstorm Deployment: 54 NDF TSOs deployed from McCarran International Airport, Las Vegas, to Denver from December 23, 2006, through January 3, 2007 to assist with the reopening/stabilization efforts at Denver International Airport. During their deployment, a second snowstorm hit the Denver area resulting in the need to extend the deployment of the 54 TSOs by an additional week. Those 54 NDF TSOs were unable to return to McCarran International Airport in time to support the New Year's passenger volume. This resulted in the Agency deploying 30 Salt Lake City International Airport TSOVs to McCarran International Airport, Las Vegas.
- International Cyprus Deployment: 16 NDF TSOs and 11 TSOVs deployed from numerous airports to support the U.S. citizen evacuation from Lebanon. These TSOs conducted the passenger screening security operations in Larnaca, Cyprus, from July 22, 2006, through August 2, 2006.
- Seattle Washington Snowstorm Deployment: On November 29, 2006, a major snow and ice storm struck the Greater Seattle-Tacoma area. The unexpected severity of the storm limited the ability of Seattle-Tacoma International Airport TSOs to report on-time for duty. Within six hours of notification, 12 TSOVs from Portland International Airport, Portland, Oregon were flown into Seattle-Tacoma International Airport to assist in providing screening security operations. This deployment concluded on December 1, 2006.
- United Kingdom Explosive Threat Deployment: No NDF TSOs or TSOVs were deployed to support this incident. TSOs operated at their home airports.

Question#:	10
Topic:	whistleblower protection
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: In your testimony you state that "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 (OSC) signed in May 2002. The assertion that TSOs do not have whistleblower rights is unfounded." However, both the Merit Systems Protection Board (MSPB) and federal courts have found that TSOs have no enforceable whistleblower protection rights. The OSC only investigates about 10% of whistleblowers complaints government-wide. When OSC investigates, it only can make recommendations against confirmed retaliation.

Please state the avenues of appeals available to TSOs when the OSC either fails to investigate their whistleblower claim or finds that they were not retaliated against.

Please explain how a TSO can enforce an OSC recommendation that TSA refuses to accept.

Response: Yes, all Transportation Security Officers (TSOs) have Whistleblower protections. A formal Memorandum of Understanding (MOU), signed in 2002, with the U.S. Office of Special Counsel (OSC) provides TSOs with an independent review of their rights under 5 U.S.C. 2302(b)(8). This OSC review is the same as afforded to any other federal employee. TSOs have protections from reprisal for whistle blowing. It is the Transportation Security Administration's (TSA) policy that taking a personnel action against an employee because of protected whistleblowing is strictly prohibited (Human Resources Memorandum 1800-01.) Although TSOs do not have the right to pursue their complaints to the Merit Systems Protection Board, the Office of Special Counsel (OSC) processes complaints received from TSOs in the same manner it processes all other complaints, and TSA employees must cooperate with OSC investigators.

In practice, OSC generally seeks to resolve complaints through settlement prior to issuing findings or recommendations. TSA takes whistleblower retaliation complaints seriously, and for cases in which OSC recommends settlement negotiation, TSA will seek to reach a viable resolution. For example, the only TSO case that was referred to an OSC investigator during the past two years, of which TSA is aware, was resolved without a full investigation or any findings or recommendations. TSA worked with the TSO to resolve his concerns and OSC closed the case with no further action. To date, TSA has

Question#:	10
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Primary:	The Honorable Daniel K. Akaka
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not declined to accept a recommendation from OSC, and would not do so without senior leadership approval.

TSA is not notified regarding complaints for which OSC determined an investigation was not warranted, nor does TSA have any input into these OSC determinations.

In addition to pursuing a case to the OSC, a TSO may raise issues of reprisal for whistleblowing through the Disciplinary Review Board (to obtain an independent review of an adverse action if one has occurred), the Ombudsman Office, and through leadership channels.

TSA supports allowing TSOs to appeal to the Merit Systems Protection Board (MSPB) to the same extent that other TSA employees now have rights of appeal to the MSPB, and codifying the whistleblower protections already established for TSOs through the MOU.

Question#:	11
Topic:	Rehabilitation Act
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: TSA has successfully argued before federal courts that TSOs do not have the protection of the Rehabilitation Act. (Tucker v. Ridge, 322 FSupp2d 738 (E.D. Texas 2004)). Nonetheless, you testified that TSA has a lower rate of formal Equal Employment Opportunity (EEO) complaints than federal agencies comparable in size to TSA, such as the Department of Transportation (DOT) and the Social Security Administration (SSA).

How does TSA compare with DOT and SSA in the number of EEO cases if the number of cases in those agencies involving the Rehabilitation Act are subtracted?

Response: The Transportation Security Administration (TSA) does not have a breakdown of the formal Equal Employment Opportunity (EEO) complaints by basis and issue for the Department of Transportation (DOT) or Social Security Administration (SSA). TSA provided DOT and SSA total formal EEO complaints filed in fiscal year (FY) 2005 from information made public in Equal Employment Opportunity Commission's (EEOC) Annual Report on Federal Work Force Fiscal Year 2005, http://www.eeoc.gov/federal/fsp2005/index.html. The total formal EEO complaints for each Federal Agency is located in Table B-1, http://www.eeoc.gov/federal/fsp2005/cad/table_b-1.html. The EEOC Report does not list by the basis of the complaints (Rehabilitation Act or other) and therefore a comparison, as requested, cannot be made by TSA.

Question#:	12
Topic:	collective bargaining
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: In response to a question raised during the hearing, you stated that you fly in and out of San Francisco's airport all the time and that the San Francisco International Airport is safe. Screeners at San Francisco's airport are employed by a private contractor, not TSA. They perform the exact same duties as TSOs, but following the case of Firstline Transportation Security, Inc., and International Union, Security, Police and Fire Professions of America (SPFPA) Case 17-RC-12354 (June 28, 2006), private airport screeners were granted the broad labor rights enjoyed by other workers in the private sector. The court held that "We can find no case in which our protection of employees' [labor] rights had an adverse impact on national security or defense. Our jurisprudence establishes that with regard to nation security and defense, employee "[s]elf – organization for collective bargaining is not incompatible with efficient and faithful performance of duty...Unionism and collective bargaining are capable of adjustments to accommodate the special functions of security screeners."

Please explain how the collective bargaining rights of San Francisco International security screeners have compromised air travel safety in any way.

Please explain how the collective bargaining rights of San Francisco International security screeners have prevented the Federal Security Director from changing assignments on a day-to-day basis to thwart terrorism.

Have the security screeners at San Francisco International ever gone on strike or participated in a work slowdown or stoppage of any sort?

Please provide an itemized list of the cost to TSA of collective bargaining at San Francisco International.

Response: There is only one Screening Partnership Program (SPP) airport (San Francisco International Airport - SFO) that operates under a collective bargaining agreement. The other SPP airports do not have collective bargaining agreements with their contractor employees. The SPP contract at SFO operates under private sector labor relations laws (National Labor Relations Act) under the auspices of the National Labor Relations Board (NLRB). That system differs significantly from the Federal sector system under Chapter 71 of Title 5 in that private sector collective bargaining generally

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focuses on pay and benefits. Another significant point is that the SPP contract requires the contractor to provide personnel, as required by the Transportation Security Administration (TSA), and to follow TSA's screening procedural requirements even if the collective bargaining agreement places limitations on what the contractor can do with regard to personnel policies. The SPP contract has the overlay of TSA authority to override local union contract provisions, when necessary. Therefore the SPP program is not representative of how collective bargaining would operate in a security setting where the government is a direct party and how security is delivered may be subject to collective bargaining.

TSA is satisfied that the SPP contractor is fully complying with its contract obligations to TSA to provide security on a par with all other airports. We are not aware of any labor disputes that have affected the contractor's performance to date.

Collective bargaining costs of the bargaining unit only are presumed to be accommodated within the total contract price. TSA is not invoiced for union/collective bargaining costs per se, and TSA's costs to interact with the collective bargaining unit would not be included in those costs.

Question#:	13
Topic:	DRB
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: TSA has an internal board, called the Disciplinary Review Board (DRB), to adjudicate employee appeals of adverse action.

Approximately how many cases per year are filed, and how many are found in favor of the employee? Who sits on the DRB, how are members selected, and what training do they receive?

Response: The Transportation Security Administration (TSA) Disciplinary Review Board (DRB) operates within the TSA's Office of Administrative Appeals and Review. It is currently composed of three (3) voting members at each decision meeting. The Board is comprised of:

- The Board Chair is the Administrative Appeals and Review Officer;
- The TSA Office of Security Operations (OSO) provides one member (currently one of the three Area Directors or Deputy Area Directors); and
- The TSA Office of Human Capital (OHC) designates one member by name (and one alternate).

The members have operational, personnel, and decision-making expertise by virtue of their current functions. All are K-Band employees or above. Additionally, prior to membership on the DRB, each of the Board members is given detailed training on standards of evidence, disciplinary procedures, due process procedures, and penalty selection by the DRB Director.

There are approximately 300 cases per year. Eighteen percent of the management actions are overturned or mitigated in favor of the employee.

Question#:	14
Topic:	internal appels systems
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: One concern that I have had with proposals to create internal appeals systems is lack of clarity surrounding binding court precedent.

Does TSA follow precedent set by the MSPB and, if not, does TSA post the decisions of the DRB so that employees have a full understanding of the interpretation of internal rules and procedures? How is this information relayed to FSDs and TSOs?

Response: The Transportation Security Administration (TSA) Disciplinary Review Board (DRB) treats relevant Merit Systems Protection Board decisions as persuasive and frequently cites them in its published Opinions and Decisions. Where court decisions are relevant to interpretation of statutes applicable to TSA, or to fundamental due process, the DRB considers them binding.

The parties to each appeal - management and the employee - are sent a copy of the DRB Opinion and Decision that includes the background for the action, the positions of the parties, and the Board's findings of fact and conclusions. All DRB Opinions are posted on TSA's intranet with personal information redacted, available for all TSOs and TSA management to gain understanding of the disciplinary process, and to assist in promoting uniform standards of discipline throughout the more than 400 airports secured by TSA.

The rules and procedures followed by the DRB are contained in a TSA Management Directive and are posted on the TSA intranet. Additional information applicable to individual appeals is provided to the appellant and management in correspondence from the DRB. The DRB intranet webpage features additional information, including responses to frequently asked questions.

Question#:	15
Topic:	personnel matters
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: What, if any, would be the immediate effect should the provision eliminating your authority over personnel matters be enacted?

Response: The Transportation Security Administration would lose its flexibility to develop and implement innovative programs related to hiring and related benefits for the Transportation Security Officers, training, as well as the ability to quickly deploy staff.

Question#:	16
Topic:	Aviation Transportation Security Act
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: How has TSA used its existing flexibilities under Section 111(d) of the Aviation Transportation Security Act to empower its TSO workforce and improve its effectiveness?

Response: Using the flexibilities provided to the Transportation Security Administration (TSA) under Section 111(d) of the Aviation Transportation Security Act, TSA has been able to:

- Flexibly deploy Transportation Security Officers (TSOs) in anticipation of and in response to man-made and natural disasters and other emergencies. During Hurricane Katrina and after the United Kingdom 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.
- Completely re-engineer the TSO hiring process to shift from the original centralized headquarters-centric model to a decentralized local hiring model that is more responsive to the individual TSO hiring needs of Federal Security Directors. This change reduced the time required to hire new employees from six months to six weeks.
- Implement a pilot program where TSA pays the government share of federal health benefits at the full-time rate for part-time employees intended to improve the retention of part-time TSOs.
- Design a disciplinary system that provides full due process rights to TSOs, and is more efficient than that statutorily required for other Federal agencies, enabling TSA to better support its security mission by quickly taking disciplinary action where necessary. This system includes a one-step termination process for serious offenses such as theft, illegal drug use, intoxication on duty, and off-duty criminal involvement.
- Improve the work life of our TSOs through direct interface between senior management and our front-line workforce.
- Put in place parallel systems, on its own initiative, to ensure that all TSA employees enjoy the same level protection afforded to other Federal workers. These systems include:

Question#:	16
Topic:	Aviation Transportation Security Act
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- Whistleblower protection through a Memorandum of Understanding with the Office of Special Counsel,
- An Alternative Resolution of Conflict program through the TSA Office of Civil Rights, that fulfills the statutory requirements of providing effective Alternative Dispute Resolution system for Equal Employment Opportunity complaints.
- Implementation of a Disciplinary Review Board (DRB), which provides due process equivalent to that available through appeals to the Merit Systems Protection Board.
- Implementation of an Integrated Conflict Management System program, which is a collaborative, integrated employee engagement mechanism at airports to address workplace issues.
- Beginning a peer review system which will be expanded to additional airports to provide another option for conflict management and resolution. 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.

Question#:	17
Topic:	human capital system
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: Are there aspects of the human capital system that TSA has put into place for its workforce that would not be possible if TSA's authority under Section 111(d) of the Aviation Transportation Security Act was eliminated?

Response: The Transportation Security Administration would lose the flexibility provided under 111(d) to pay different kinds of compensation packages. For example, depending upon the labor market in each airport location, TSA can provide a "cafeteria" style set of compensation packages that best suit different locations. The ability to attract and retain part-time employees by paying the government share of federal health benefits at the full-time rate for part time employees would also be lost. Finally, the ability to flexibly deploy TSOs in anticipation of and in response to man made and natural disasters and other emergencies would be lost.

Question#:	18
Topic:	survey data
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: The Office of Personnel Management conducts the Federal Human Capital Survey every two years. While specific information for TSA is not available to the public, the overall score for the Department of Homeland Security shows that the Department is in need of significant investment in its workforce.

What initiatives has TSA taken in response to this survey data? Does TSA conduct its own employee surveys?

Response: Yes, the Transportation Security Administration (TSA) conducted two of its own internal employee satisfaction surveys in spring 2004, and a second Organizational Satisfaction Survey (OSS) in March/April 2006. Of the nearly 17,900 total responses, more than 14,000 identified themselves as Transportation Security Officers (TSO's), and the overall response rate for the 2006 OSS was 36%. The results of the 2006 survey showed an overall increase in the percent of favorable responses for 8 of the 15 dimensions as compared to the 2004 baseline data. The dimensions with the largest percentage point increase were; 1) Work Environment/Quality of Work Life (+13 percentage points); 2) Diversity (+13 percentage points); and, 3) Teamwork (+9 percentage points). At the individual question level, the 2006 results show that: 1) 95% of employees feel the work they do is important; 2) 69% of TSA employees plan to remain with TSA for the next 12 months; 3) 67% of employees are proud to work for TSA; and, 4) 59% of employees are satisfied with their jobs – a 23% increase over the 2004 response.

In July 2006, TSA provided the overall and specific OSS results for each organizational component to the Federal Security Directors (FSDs). Each FSD was tasked with working with their local employee councils to identify and implement actions targeted at specific survey results. In January 2007, the FSDs received a separate briefing on the Office of Personnel Management (OPM) survey results. TSA recently completed a comparison analysis of the 2006 OPM and OSS results to identify disconnects between the two sets of data and to identify specific areas for corporate focus. Although the initial emphasis was on local action, TSA is planning a series of agency wide initiatives to address the survey data and is finalizing a plan of action under three broad goals. These goals are: 1) Leadership Driving Change – Improving the quality of leadership across TSA at all levels; 2) The TSA Story – Communicate and connect all employees with TSA's organizational direction, core values, and desired culture; and, 3) Employee Empowerment – Create a work environment that fosters the ability and desire of employees to act in empowered ways.

Question#:	19
Topic:	collective bargaining
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: In my opening statement I questioned whether or not a snowstorm would qualify as an emergency situation under the federal employee collective bargaining statute.

Mr. Hawley, what criteria would TSA use to define an emergency situation under a system of collective bargaining? How much discretion would be afforded to local airport Federal Security Directors?

Response: The definition of what would constitute an emergency situation under collective bargaining would likely be subject to litigation. The Transportation Security Administration (TSA) would define an emergency situation broadly to include any situation that changes the security environment. These situations could stem from threat intelligence, weather or other natural phenomena, requirements to extend security screening beyond normally scheduled hours, or local security incidents that result in a larger than normal concentration of unscreened passengers or baggage waiting to complete security screening. TSA provides full discretion to the Federal Security Director to move/redeploy Transportation Security Officers on an as-needed basis to prepare for and respond to these situations and to ensure randomness in the layers of security. Incidents (weather or other) that require flexibility to deploy across multiple airports to surge or staff are coordinated at the national level with the local FSD.

Question#:	20
Topic:	EMG
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: In December, TSA issues a management directive allowing the formation of employee morale groups (EMG) at individual airports.

What is TSA's vision for these groups? How many of them have been formed?

Response: Employee Morale Groups (EMGs) are groups of Transportation Security Administration (TSA) employees who informally join together for morale, support or other similar activities. These groups are self-sustaining, non-Federal entities comprised of Federal employees that operate in TSA facilities and may do limited fundraising for the benefit of the group. EMGs are an important complement to the formal TSA organization and help foster a sense of belonging and esprit de corps, create a sense of personal involvement, and promote the morale and efficiency of TSA employees. The purpose of the management directive is two fold. First, it provides direction and guidance to TSA employees regarding the formation of these types of groups. Second, it provides the mechanism to ensure that the Federal Security Directors are aware of, approve, and exercise oversight of EMGs that operate in facilities under their control.

Question#:	21
Topic:	performance management systems
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: Please provide specifics of the performance management systems for TSOs.

How often are they reviewed? When are performance pay adjustments made?

Response: After more than a year of research, design, and development the Transportation Security Administration's (TSA) Performance Accountability and Standards System (PASS) was launched in April 2006. Built upon the input of approximately 4,000 headquarters and field employees from across the country, PASS is designed to provide a systematic, systemic, data-driven, and integrated approach to managing and improving screener workforce performance that is strongly linked to TSA's long and short term strategic plans, organizational goals, and desired performance results.

Unlike many performance management systems that measure employee performance annually, or semi-annually, PASS is designed to measure employee performance continuously throughout the performance cycle using tools such as formal assessments, competency tracking sheets, adherence to training requirements, and other key measures. This comprehensive system includes the following components: technical proficiencies; general competencies; readiness for duty; training and development; collateral duties; supervisory accountability; and, management and technical proficiencies. Supervisors and managers of all PASS-covered employees are required to meet with their employees no less than each quarter to discuss employee performance. Employees that are identified as performing below the Achieves Standards level at any point during the performance cycle are required to be placed on a formal performance plan in an effort to help that employee improve their performance. Employees that are unable to improve may be provided additional remediation in an effort to improve their performance, given an opportunity to apply for an open non-screening position, or terminated for poor performance. Currently, employees earn a performance rating in one of four categories: Role Model of Excellence, Exceeds Standards, Achieves Standards, or Does Not Meet Standards.

In fiscal year (FY) 2006 PASS Final Ratings were used to determine an employee's end-of-year salary increase as well as their end-of-year performance bonus. Salary increases and performance bonuses were paid out in February 2007. In FY 2007, this same process will be repeated.

Question#:	22
Topic:	National Advisory Council
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: TSA has formed a National Advisory Council.

Mr. Hawley, would you please describe the purpose and composition of that Council? To date, what actions has TSA taken as a result of those meetings?

Response: The purpose of the National Advisory Council (NAC) is to serve as an advisory entity to the Assistant Secretary at the Transportation Security Administration (TSA) and Senior Leadership Team (SLT) on workforce issues in the field to promote greater job satisfaction and improve organizational effectiveness through enhanced communication, cooperative problem solving, and fostering innovation and replication of best practices. The NAC also helps provide potential solutions or approaches to issues with national implications. The Council has established a series of standing committees, such as: the Committee on Coordination, Committee on Governance/Membership, and the Committee on PASS. The committees work collaboratively over time with various TSA offices to develop solutions to issues of concern to the field and to provide the field perspective during the development of new policies and programs. TSA leadership and the NAC communicate monthly via conference calls and quarterly during week-long meetings at HQ.

The NAC is composed of 55 members, and consists of an Assistant Federal Security Director-Screening Advisory Council (21 members) and the Transportation Security Officer (TSO) Advisory Council (34 members). Council members represent the three operational areas and airports of all sizes and serve as members for two years. Additionally, the TSO Advisory Council consists of TSOs, Lead TSOs, and Supervisory TSOs. The NAC has also established a Points of Contact (POC) Network that connects the national council to more than 200 airports and local employee advisory councils, covering more than 90% of the TSO workforce.

In addition to influencing the development of specific programs and policies through the close work between the NAC and various HQ functions, TSA has adopted a number of NAC recommendations. These recommendations include:

- **National Points of Contact (POC) Network**

Question#:	22
Topic:	National Advisory Council
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

The National Advisory Council (NAC) recommended to senior leadership that Transportation Security Administration (TSA) create an advisory council National Points of Contact (POC) network to standardize the process for gathering field input on workforce matters of national significance. The network would also disseminate information and decisions from their quarterly meetings with TSA leadership back to the workforce. TSA accepted the recommendation and worked with the NAC to create a network that includes over 200 POCs at hub and spoke airports nationwide.

- **TSO Uniforms**

The Uniform Committee of the National Advisory Council reviewed TSA's Uniform and Appearance Management Directive and submitted recommendations to improve the professional appearance of the TSO workforce. The Uniform Committee analyzed 55 pages of input and ideas received from the field on uniform changes and provided a number of specific recommendations including the creating of a National Uniform and Standards Board. TSA leadership accepted these recommendations and is working towards establishing the National Uniform and Standards Board in May 2007.

- **National Safety Awareness Campaign**

The NAC Safety Committee recommended that TSA implement a quarterly National Safety Awareness Campaign to focus on specific workplace safety themes to reduce on-the-job injuries in the field. TSA accepted this recommendation and is convening a National Safety Awareness Working Group in April 2007 to develop this campaign.

- **Revisions to Standard Operating Procedures (SOPs)**

TSA accepted the NAC recommendation to better involve the TSO community in the review process of revisions to security SOPs prior to implementation. The broader involvement of field personnel ensures that SOP changes are clearer and better reflect the operational challenges associated with field implementation. The NAC now has a standing SOP Committee that collaborates with headquarters policy office personnel during each quarterly meeting. This structure also supports quick review of short-fused procedural changes needed to improve security, reduce on-the-job injuries, and enhance customer service.

- **PASS (Performance Accountability and Standards System)**

Question#:	22
Topic:	National Advisory Council
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

The NAC has had extensive dialogue with senior leadership about PASS both in terms of the details of implementation and the compensation associated with it. TSA adopted a number of key recommendations to strengthen the PASS program and remains actively engaged with the NAC with regard to the PASS program. One key change that resulted from discussions with the NAC was increasing the amount of performance bonus and base pay increase for employees that received a final rating of Role Model of Excellence or Exceeds Standards on the fiscal year 2006 evaluation.

Question#:	23
Topic:	TSOs expertise
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: How long does it take for a TSO to be on the job before he or she is able to be considered an expert at what they do? What percentage of your workforce meets that threshold?

Response: There is no single answer to this question. There are many variables involved in performing screening functions and gaining personal success at screening. Although every person is different, TSA has generally accepted the research that suggests an individual reaches a level of proficiency at 18 months where they can perform and adapt to many changing variables of the job. For example, the type of equipment used, new technology being deployed, differences between job functions at the checkpoint and in checked baggage, airport screening deployment, previous work experience, new layers of security screening implemented, and changes to our standard operating procedures (e.g., implementation of liquids, gels, and aerosols as prohibited items). The Transportation Security Administration (TSA) strives to have a high performing workforce throughout our hiring, training, and performance management systems. In particular, our pay for performance system, known as the Performance Accountability and Standards System (PASS), allows all Transportation Security Officers (TSOs) to meet the highest performance level if they meet the required proficiencies and standards, regardless of how long they have been on the job, and the TSO career path allows progression for TSOs who meet required proficiency and performance standards.

All TSOs are hired as Basic or Entry-level TSOs at the D Band (GS5/6 comparable). They receive over 100 hours of formal classroom training and on-the-job training before being tested and certified to independently perform security screening functions. Recently, TSA implemented a more extensive career path for TSOs including a full performance E Band level. After two years of TSO experience and achieving necessary performance standards, TSOs are eligible to be non-competitively promoted to the full performance level of E Band. TSA has approximately 16,600 D Band TSOs (46%) and approximately 19,600 E Band TSOs (54%) nationwide. From the E Band level, TSOs can compete for promotions to the Lead (F Band) and Supervisor (G Band) positions as well as the newly created Master (F Band) and Expert (G Band) technical positions currently being staffed with Behavior Detection Officers and Bomb Appraisal Officers.

Question#:	24
Topic:	attrition
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable John W. Warner
Committee:	HOMELAND SECURITY (SENATE)

Question: While the job attrition rate for TSA Screeners (TSO) is higher than in some other federal occupations, the rate has declined recently.

What efforts are you taking, and plan to take in the future, to address TSO employee labor complaints regarding unfair working conditions and ensure better retention of employees? As I'm sure you agree, our national security would benefit from retaining trained employees and employees who could provide guidance to new TSA Screeners.

Response: The Transportation Security Administration (TSA) concurs that retaining trained and certified Transportation Security Officers (TSOs) improves the overall effectiveness of airport security screening. Since November 2005, TSA has implemented the following initiatives to address TSO concerns regarding labor practices and to improve retention:

- Formed Transportation Security Officer Advisory Council that meets quarterly with the Assistant Secretary and TSA leadership to address workforce concerns;
- Changed job category to Transportation Security Officers (TSOs)/1802 Series, and positioned the TSO job as a feeder occupation for other Department of Homeland Security law enforcement and security jobs;
- Implemented a TSO career progression plan that allows entry level TSOs to be promoted and develop careers within TSA and DHS;
- Promoted more than 19,000 TSOs to the full performance (Journeyman) E Band level;
- Created new TSO job functions: Behavior Detection by Observation, Bomb Appraisal Officer, and Screening Technical Instructor;
- Implemented local hiring model that cut hire time from six months to six weeks and reduced excess workload on existing staff resulting from delays in replacement hiring;
- Implemented local Safety Action Teams to identify and address local workplace hazards. Spent $40 million to procure ergonomic chairs, anti-fatigue mats, roller conveyor tables, and baggage handling equipment to reduce the physical demands of the job;

Question#:	24
Topic:	attrition
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable John W. Warner
Committee:	HOMELAND SECURITY (SENATE)

- Implemented a Nurse Case Management program to work with individual employees that experienced an on-the-job injury to ensure there medical needs were met and to return them to employment as soon as practical;
- Pay for Performance evaluation program for all TSOs (permanent raises plus cash awards);
- Pay for performance awards payout to TSOs,
- Developed and implemented Employee Advisory Councils with Integrated Conflict Management System that covers more than 90% of all TSO employees.

Question#:	25
Topic:	National Advisory Council
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable John W. Warner
Committee:	HOMELAND SECURITY (SENATE)

Question: As I understand, TSA has established local and national advisory councils as a forum for employees to raise concerns.

Do you believe these councils are helping to address employee concerns in an effective manner? Would it be beneficial to provide these councils with greater authority or more access to higher TSA officials to address concerns or labor complaints?

Response: The National Advisory Council (NAC) is proving to be a very effective method for bringing concerns of field employee regarding common Transportation Security Administration (TSA) programs and processes to the attention of senior TSA leadership and for involving field employees in creating solutions to these matters in collaboration with TSA headquarters staff. The NAC provides an unfiltered dialogue between the Assistant Secretary, other TSA executives, and representatives of the Transportation Security Officer (TSO) and Assistant Federal Security Director communities. The result of this direct access to the Assistant Secretary has had immediate adoption of recommendations on payouts for performance, training needs, safety issues, and more.

Question#:	26
Topic:	adverse employment actions
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable John W. Warner
Committee:	HOMELAND SECURITY (SENATE)

Question: Could you provide more detail about the process for TSOs to seek resolution of possible adverse employment actions and what their options are for appealing any decisions?

Response: For serious adverse employment actions, Transportation Security Officers (TSOs) may appeal to the Transportation Security Administration Disciplinary Review Board (DRB), which currently exercises jurisdiction over appeals for removals, reductions in pay band or pay amount, suspensions of 15 days or more, and indefinite suspensions. The DRB appeal process is only available to TSOs who have completed a one-year trial period. Individuals who are serving a trial period and are removed have no appeal and/or grievance rights. This is similar to policies and programs in effect for employees covered by Title 5 provisions. TSOs who are the subject of adverse employment actions (other than removal) and are serving a trial period may grieve the action.

Alternative dispute resolution is also available to address such issues and has been applied locally and by the DRB in appropriate cases. Additionally, TSOs can seek review of adverse employment decisions through the Equal Employment Opportunity process for alleged discrimination issues, or the Office of Special Counsel if the individual believes the action is associated with alleged whistleblower activity.

Question#:	27
Topic:	MSBP
Hearing:	A Review of the Transportation Security Administration Personnel System
Primary:	The Honorable John W. Warner
Committee:	HOMELAND SECURITY (SENATE)

Question: Several proposals have been discussed, one of which would allow TSOs to appeal to the Merit System Protection Board (MSBP) and also codify the whistle blower protections already established for TSOs through the MOU.

Are you supportive of such a proposal? Do you have any reason to believe that the ability to appeal to the MSBP would require extra resources from the agency, or that it would delay or prolong the time it would take to rectify a complaint?

Response: The Transportation Security Administration (TSA) supports allowing Transportation Security Officers (TSOs) to appeal to the Merit Systems Protection Board (MSPB) to the same extent that other TSA employees now have rights of appeal to the MSPB, and codifying the whistleblower protections already established for TSOs through the MOU. We have reason to believe that extending appeals to the MSPB for TSOs would require additional legal resources from the agency and prolong the time necessary to rectify a complaint. The current average appeal to the TSA Disciplinary Review Board is a one-step process, although reconsideration is possible. The MSPB is a two step process, with an initial decision by an Administrative Judge, followed by the opportunity to appeal to the full Board. We oppose the provision in Sec. 904(a)(1) of S. 4, which would make applicable to TSOs chapters 75 and 77 of title 5 which are not applicable to appeals by other TSA employees.

STATEMENT BY
JOHN GAGE, NATIONAL PRESIDENT

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 11th 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 15th, 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.

Selected LEO Occupations	Range of Annual Quit Rates (Percent) FY 2001 - 2003
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
Transportation Security Officers FY 2006	**16 – 49 (FY 2006)**

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.

Post-Hearing Questions for the Record
Mr. John Gage
President
American Federation of Government Employees

1. Could you please respond to the question above regarding the effectiveness of advisory councils?

Although I was not provided with the previous question to comment upon, at AFGE our TSOs have found airport advisory councils do not provide them with the real voice at work of union membership backed with a collective bargaining agreement. Advisory Councils can only make recommendations to TSA management, who are free to disregard them. Given the climate of management intimidation and harassment at many airports, TSO members of the Advisory Councils are often afraid to voice their real opinions. Shop stewards can provide a buffer against retaliation in many cases, and often diffuse a workplace situation before it escalates. Collective bargaining agreements often include health and safety and other worker committees that offer workers the ability to voice concerns and make problem-solving recommendations to management without the fear of reprisals.

2. What is your view on the possible proposal to allow TSOs to appeal to the MSPB and to codify the whistleblower protections? How many issues would such a proposal address in your opinions? What concerns would remain?

Given that TSOs currently have no objective third-party review of TSA disciplinary actions, *any* additional labor protections are a step in the right direction. However, by themselves MSPB appeal rights and enforceable whistleblower protections fail to provide sufficient workplace protections for TSOs, and fall far below workplace rights of other at TSA and the Department of Homeland Security. The adverse actions that workers are permitted to appeal to the MSPB are: demotions that result in a reduction of base pay, suspensions of more than 14 days and terminations. Although these actions are severe, they probably account for only one-half of the adverse disciplinary actions that can be taken against TSOs. Most employers use some form of progressive discipline, with suspensions increasing in duration until the worker is terminated. In the case of TSA, it would be far too easy for TSA to repeatedly discipline a TSO just short of 14 days to ensure there is no objective third party review. The ability to seek objective third-party review for only one-half of the unfair disciplinary actions levied against TSOs simply is not good enough.

In fact, the proposal to allow TSOs appeal rights to the MSPB does not address the work-life issues that are of most importance to TSOs in particular and workers in general. The proposal does not allow TSOs appeal rights of letters of reprimand, warning or leave restrictions, TSA's most frequently-used disciplinary action. TSOs can be placed on leave restriction for taking annual leave approved by a supervisor, sick leave for documented medical reasons or Family Medical Leave to care for a sick

child or spouse. While on leave restriction any absence for work f or any reason can result in a TSO's termination. In addition, regardless how highly evaluated, TSOs are not eligible for bonuses or raises under TSA's PASS system while on leave restriction. Complaints about scheduling, including when workers are targeted for overtime, the worst shifts or part-time workers subject to split-shifts that require their presence at the airport 12 – 14 hours at a stretch cannot be taken to the MSPB.

The MSPB also does not have jurisdiction over rights that are conveyed by statute, such as violations of the Rehabilitation Act; training requirements such as those set forth is ATSA or OSHA standards. The grievance procedure set forth in a collective bargaining agreement allows workers to get a fair hearing on the work life issues such as the fairness of leave, scheduling, health and safety standards and availability of training that determine whether a worker stays on the job or quits. Often the collective bargaining agreement provides a means for workers to have their complaints heard short of filing a grievance. It is very easy to see why TSAs who lack the ability of fair hearing and redress continue to have such a high attrition rate.

Enforceable whistleblower protections are an improvement over the nominal protections currently available to TSOs, in that TSA would be bound by the findings and recommendations of the Office of Special Counsel (OSC). However, OSC only investigates about 10% of whistleblower complaints government-wide, and has investigated almost no TSO complaints. Federal workers who pursue their whistleblower complaints through the grievance procedures of a collective bargaining agreement have their cases adjudicated far more quickly with far greater success than their counterparts who pursue a whistleblower complaint through the OSC. Collective bargaining agreements often provide a resolution to the complaint short of arbitration.

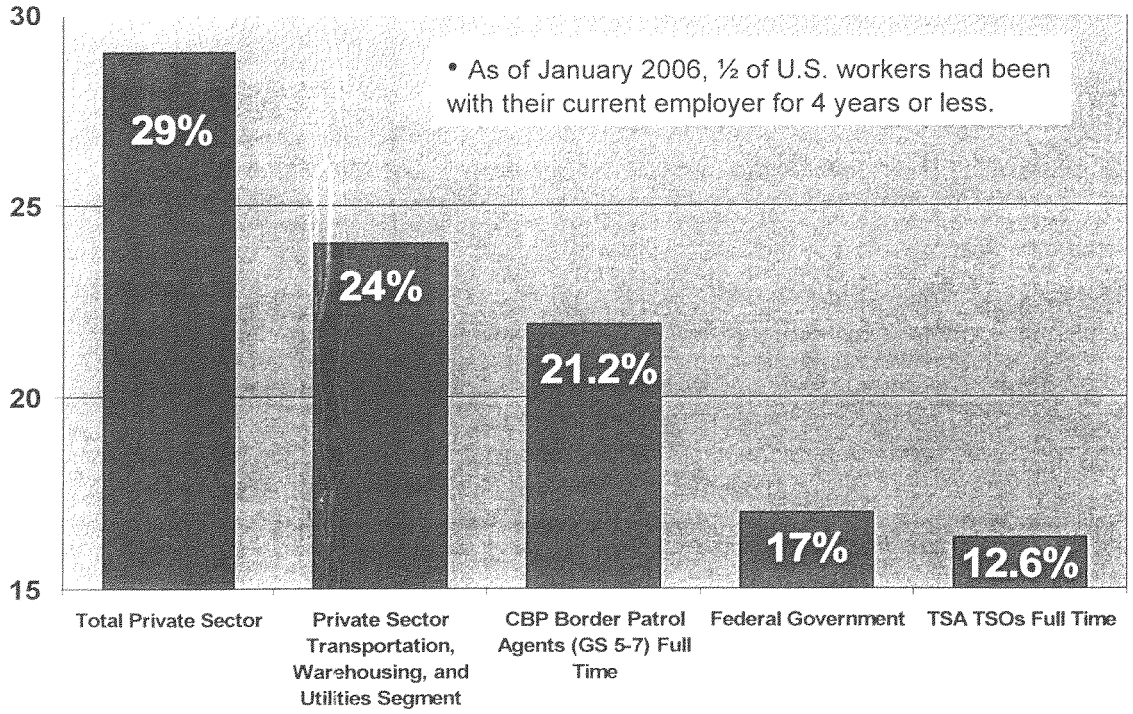
Collective Bargaining Accusations	TSA Realities
No Whistleblower Protections	**Whistleblower Protections**: Guaranteed
Increasing Injuries	**Injuries**: Decreasing; Lower than like Public Sector Occupations
Mandatory Overtime	**Overtime**: Managed; Typically Voluntary
No Veterans' Preference	**Veterans' Preference**: Guaranteed; 26% of TSO Workforce
No Rehab Act Coverage	**Rehab Act Coverage**: Guaranteed
No Union Membership Allowed	**Union Membership**: Allowed; Through Payroll Deductions
No Union Representation Rights	**Representation Rights**: Employee Representation of Choice
No Due Process	**Due Process**: Guaranteed
"Sky High" EEO Complaints	**EEO Complaints**: 0.6%; Lower Than Many Agencies

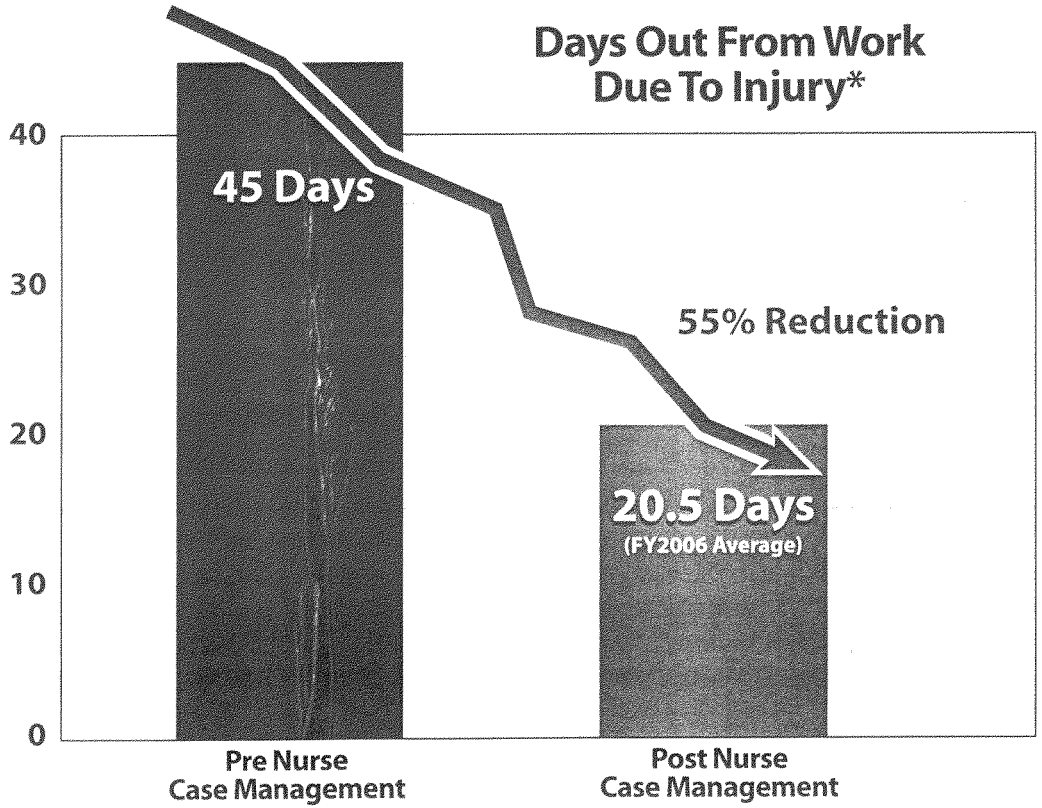
Major Workforce Initiatives

Transportation Security Administration

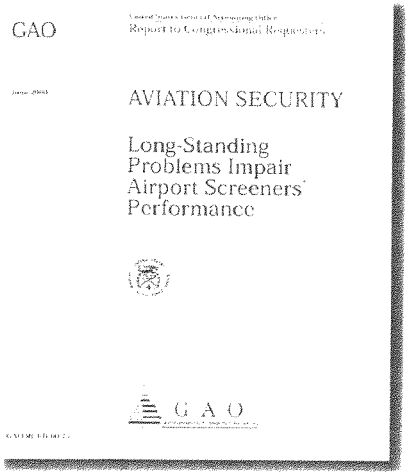
November 2005	Formed **Transportation Security Officer Advisory Council**, Quarterly meetings with the Administrator Changed job category to Transportation Security Officers **(TSOs)** / 1802 Series, a feeder for law enforcement jobs **(IED) Training** delivered to **18,000 TSOs** in **three weeks**
December 2005	Developed program to surge unpredictable security support **(43 operations in 2006)** $40 million in **ergonomic** chairs, anti-fatigue mats, roller conveyor tables and baggage handling equipment
January 2006	**Nurse Case Management** program available in **every** airport
March 2006	**Local hiring:** cut hire time from **6 months to 6 weeks**
April 2006	**Pay for Performance incentive program** for all TSOs (permanent raises + cash awards) **Annual certification process** from one-time pass/fail to a coaching process/cash incentive TSO **Retention** and Recognition Incentive Program bonuses to 41,041 TSOs
August 2006	TSO **career progression** allows entry TSOs to be promoted and develop careers within TSA and DHS; **21,000 promoted to E band since implementation** TSOs begin screening for **fraudulent identification** and travel documents Random screening of airport employees and vehicles **anywhere** on airport property
September 2006	New Jobs: **Behavior Detection by Observation** (BDO), **Bomb Appraisal Officer** (BAO), and **Screening Technical Instructor** (STI) TSOs given **discretion** to determine **threat items** at the checkpoint in response to the UK liquid and gel plot
February 2007	**Pay for performance** awards payout to TSOs totaling **$52M** in **pay raises** and **bonuses**

TSO Voluntary Attrition Rate
v.
Border Patrol Agents and Private Sector





** Continuation of pay - available for up to 45 days from injury.*



Annual Turnover Rates for Screeners at 19 Large Airports

City (Airport)	May 1998 - April 1999 (%)	2006 TSA Attrition Rates (%)
Atlanta (Hartsfield Atlanta International)	375	22
Baltimore (Baltimore-Washington International)	155	19
Boston (Logan International)	207	22
Chicago (Chicago-O'Hare International)	200	19
Dallas-Ft. Worth (Dallas/Ft. Worth International)	156	17
Denver (Denver International)	193	18
Detroit (Detroit Metro Wayne County)	79	18
Honolulu (Honolulu International)	37	16
Houston (Houston Intercontinental)	237	18
Los Angeles (Los Angeles International)	88	28
Miami (Miami International)	64	18
New York (John F. Kennedy International)	53	16
Orlando (Orlando International)	100	17
San Francisco (San Francisco International)	110	N/A
San Juan (Luis Munoz Marin International)	70	12
Seattle (Seattle-Tacoma International)	140	22
St. Louis (Lambert St. Louis International)	416	12
Washington (Washington-Dulles International)	90	31
Washington (Ronald Reagan Washington National)	47	32
Average Turnover	***126***	***20***

Source: FAA

Source: TSA

United States Senate

WASHINGTON, DC 20510

The Honorable George W. Bush
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

We are concerned that one of the provisions in S.4, the 9/11 Commission Recommendations bill, will undermine efforts to keep our country secure. Like you, we believe we need an airport security workforce that is productive, flexible, motivated, and can be held accountable. S.4 would introduce collective bargaining for Transportation Security Administration (TSA) workers, which would reverse the flexibility given to TSA to perform its critical aviation security mission. Removing this flexibility from TSA was not recommended by the 9/11 Commission and it would weaken our homeland security. If the final bill contains such a provision, forcing you to veto it, we pledge to sustain your veto.

Sincerely,

Jim DeMint

Mitch McConnell

Trent Lott

Kay Bailey Hutchison

John Cornyn

Tom Kyl

John Ensign

Jim Inhofe

Jim Bunning

Richard Shelby

Sam Brownback

Pat Roberts

Lamar Alexander

Tom Coburn

Michael B. Enzi

Saxby Chambliss

Mel Martinez

John McCain

Craig Thomas

Kit Bond

Bob Corker

Pete V. Domenici

Richard Shelby

Chuck Hagel

Mike DeWine

Wayne Allard

John Cornyn

Mike Crapo

Orrin Hatch

Judd Gregg

John Warner

TESTIMONY OF NTEU NATIONAL PRESIDENT
COLLEEN M. KELLEY

ON

TRANSPORTATION SECURITY ADMINISTRATION
PERSONNEL SYSTEM

BEFORE THE

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

MARCH 5, 2007

Chairman Akaka, Ranking Member Voinovich, distinguished members of the Subcommittee; I would like to thank the subcommittee for the opportunity to testify on the extension of collective bargaining rights to the employees at the Transportation Security Administration (TSA). As President of the National Treasury Employees Union (NTEU), I have the honor of representing 150,000 federal employees including over 15,000 federal employees in the Department of Homeland Security (DHS). These Customs and Border Protection Officers (CBPOs) are firearms-carrying law enforcement officers trained at the Federal Law Enforcement Officer Training Center and serve on the frontline of our nation's efforts to protect our borders at our land, sea and air ports of entry.

NTEU-represented Customs and Border Protection (CBP) employees have had an exemplary record in performing layered enforcement activities to prevent the entry of terrorists and instruments of terror, harmful pests and diseases, illegal drugs and contraband, and illegal aliens as well as other importations and exportations contrary to law and trade agreements. And they have collective bargaining rights. It was, in fact, an NTEU member who detected and apprehended the millennium bomber, Ahmed Ressam, at Port Angeles, Washington and prevented a potentially devastating terrorist New Year's Day attack on the Los Angeles International Airport in 2001.

It is also important to note that where a pilot program has allowed private sector workers to perform the TSO job, the National Labor Relations Board has ruled that these private sector workers may organize and bargain collectively.

On June 28, 2006, the National Labor Relations Board (Board), in a 4-1 decision involving Firstline Transportation Security, found that Firstline, a private company that provides passenger and baggage screening services at Kansas City International Airport in Kansas City, Missouri, pursuant to a contract with TSA, is subject to the Board's jurisdiction and **can organize for the purpose of bargaining collectively with their employer.**

The Board also concluded that this is not incompatible with the interests of national security. As the majority stated:

> **The Board has been confronted with issues concerning national security and national defense since its early days. Our examination of the relevant precedent reveals that for over 60 years, in times of both war and peace, the Board has asserted jurisdiction over employers and employees that have been involved in national security and defense. We can find no case in which our protection of employees' Section 7 rights had an adverse impact on national security or defense.**
>
> Further, after reviewing over 60 years of Board precedent, the majority **rejected calls that the Board decline to assert jurisdiction in the interest of national security**. The majority further found that "[a]bsent both a clear statement of Congressional intent and a clear statement from the TSA that would support our refusal to exercise jurisdiction, we will not create a non-statutory, policy-based exemption for private screeners," who are otherwise entitled to the protections of the NLRB. The NLRB ruled that the annotation codified by Section 111(d) of ATSA "does not provide the Under Secretary the statutory authority to prohibit private screeners from being represented for the purposes of collective bargaining, even though those individuals carry out the same security screening function as Federally-employed screeners."

In reaching its decision, the Board upheld a representation petition filed by the Security, Police, and Fire Professionals of America International (SPFPA) seeking to represent approximately 400 screeners and lead screeners at the Kansas City International Airport.

It is NTEU's strong belief that Congress must give to TSOs the same rights private contract screeners enjoy--the right to organize and bargain collectively. And, the scope of bargaining and the bargaining process must allow meaningful negotiations over working conditions.

NTEU believes that in order for any human resources management system to be accepted by employees as fair and ultimately successful, it is essential that it incorporate a number of basic employee protections. That is why I am testifying today in strong support of efforts to provide basic civil service and collective bargaining rights to TSA employees in S. 4, the 9/11

Commission recommendation bill. When Congress created TSA, it allowed the agency to deny collective bargaining rights to the new federal workforce responsible for screening domestic airline passengers. Despite the fact that nearly all of the other bureaus that make up the DHS have collective bargaining rights, TSA denied those rights to airport screeners.

One of the first measures Congress enacted after the 9/11 attack on America was the Aviation and Transportation Security Act (ATSA) creating the Transportation and Security Administration (TSA) and federalizing the passenger and baggage screening of domestic and outbound international air travelers. Over 600 million people travel by air each year in the United States, and the screening of airline passengers and their carry-on and checked baggage is vital to securing our transportation security system.

ATSA, enacted in November 2001, removed screening responsibility from air carriers and the private sector contractors who conducted screening for them and placed this responsibility with TSA. As a result, TSA hired and deployed about 55,000 federal passenger and baggage Transportation Security Officers (TSO)—formerly known as screeners—to more than 400 airports nationwide based largely on the number of screeners the air carrier contractors had employed. Since August 2002, TSA has been prohibited by statute from exceeding 45,000 full-time equivalent positions available for screening.

Congress' intention in federalizing the screening workforce was to replace a poorly trained, minimum-wage private contract screening workforce with professional, stable and highly trained security screening officers. Congress, however, included in ATSA, Section 111(d) that codified as a note to 49 U.S.C 44935, the following:

"Notwithstanding any other provision of the law, the Under Secretary of Transportation for Security may employ, appoint, discipline, terminate, and fix the compensation, terms and conditions of employment of Federal service for such a number of individuals as the Under Secretary determines to be necessary to carry out the screening function of the Under Secretary under section 44901 of title 49, United States Code. The Under Secretary shall establish levels of compensation and other benefits for individuals so employed."

This section permitted the establishment of a federal personnel management system that is unique to TSOs. The Federal Labor Relations Authority construed Section 111(d) as granting unfettered discretion to TSA to determine the terms and conditions of employment for federal screener personnel. Accordingly, a directive issued by then Under Secretary James Loy on January 8, 2003 barred screeners from engaging in collective bargaining.

The goal of providing screeners with adequate pay, benefits and training and thereby creating a professional and dedicated TSO workforce has been undermined by capricious and arbitrary management and the denial of the most basic workplace rights.

To date, TSA's basic management programs have been massive failures. The training and certification program, performance appraisal system, and health and safety programs all lack accountability and therefore lack credibility with employees. This lack of oversight and accountability has resulted in one of the highest voluntary attrition rates in the entire federal government as well as the highest workplace injury rates.

For example, the TSA Performance Accountability and Standards System (PASS) remains one of the largest concerns for TSA employees. Let us consider the implementation of the Agency's pay for performance system at JFK International Airport in 2006 as an example. Under the PASS system, employees are rated at four (4) levels - Role Model, exceeds expectations, meets expectations or did not meet expectations. Employees could receive merit raises if they attained ratings at the two higher levels. Only 1% to 2% of all TSO's at JFK received ratings at the highest level and only about 20% of the total number of JFK TSOs received any merit raise at all. In other words, 80% of the screener workforce at JFK received no merit raise in 2006.

Furthermore, allegations of favoritism and cronyism surround the system because there is no meaningful way for employees to challenge their ratings. They fear that if they speak up they will be fired -- and they have been. If they were to challenge their dismissal before the Agency's Disciplinary Board, they know they have a statistically insignificant chance of winning- perhaps one in twenty. The lack of Agency accountability in its personnel systems fosters a culture of employee fear that in turn leads to

unreported management incompetence. This culture of fear threatens the security of our country.

Another example of the failed personnel systems at JFK is the training and certification system. The agency has implemented a system where employees are pulled from the line and tested on screening procedures. But, training and testing are not consistent and failing grades, which can lead to dismissal, are most often linked to instances of exercising caution and pulling bags management thought should have been passed through without further check. This policy may soon lead to the dismissal of many long term competent screeners. Yet employees lack a meaningful way to fix these systemic problems because management offers only limited retraining opportunities.

As noted in a recent GAO study, Aviation Security: TSA's Staffing Allocation Model is Useful for Allocating Staff among Airports, but its Assumptions Should be Systematically Reassessed (GAO-07-299), **reasons cited for attrition by the TSO workforce include "limited advancement opportunities, need for a higher paying job, work hours, difficulty of work and job dissatisfaction" (page 48.)**

Widespread dissatisfaction with management and leadership creates a morale problem that affects the safety of this nation. I have told DHS leaders from the start that this department cannot succeed without listening to and respecting the voices of experienced, front-line employees. And the Office of Personnel Management (OPM) agrees.

According to the OPM, "an important principle behind maintaining a quality workforce is employee retention, and...TSA has acknowledged that high attrition rates drive up hiring and training costs. TSA officials stated that it costs about $10,000 to assess, hire, and train a TSO. Officials estimate that for every 2,500 TSOs that TSA retains, including part-time TSOs, TSA could save about $25 million." (GAO-07-299, page 50)

NTEU believes that TSA's continuing workforce problems stem directly from the decision to deny employee input through the collective bargaining process. TSA has been plagued by personnel problems never seen in any federal agency. Maintaining a stable, qualified, trained workforce was the primary goal of federalizing the transportation screener position. And years of massive turnover has wasted millions of taxpayer

dollars in recruitment and training costs. NTEU believes that employee rights are the foundation for building a highly trained, committed, experienced career TSO workforce.

The Administration's concerns that collective bargaining rights would limit management flexibility at TSA have been totally discredited by the record of the organized workforces at other DHS bureaus. Indeed, it is insulting to the hundreds of thousands of dedicated public safety officers with collective bargaining rights--from CBP Officers and Border Patrol Agents at DHS to local police and firefighters and your own Capitol Hill Police Force--to suggest that they would put their union rights before the national security interests of the country.

Collective bargaining rights have not hindered the federal government's emergency response capability. Every union contract with federal government agencies recognizes management's right to assign work and detail workers as necessary. In addition, **management flexibility in times of crisis is set in statute. Title V, Section 7106(a)(D), states clearly that nothing "shall affect the authority of any management official of any agency to take whatever actions may be necessary to carry out the agency mission during emergencies."**

Rather than inhibit management, collective bargaining agreements set procedures for work assignments and duties that lead to stability in the workplace. Union rights result in trained, experienced, committed and efficient workers and that is what it takes to make this nation safe.

Federal workers represented by a union have no right to strike, and any statement to the contrary is patently false. The statute creating TSA, P.L. 107-71, in Section 111, includes specific language: (i) Limitation on Right to Strike.----an individual that screens passengers or property, or both, at an airport under this section may not participate in a strike, or assert the right to strike, against the person (including a governmental entity) employing such individual to perform such screening.

Title V also includes a specific prohibition on the right to strike for all federal employees in Section 7311 that states: "An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—(3) participates in a

strike, or asserts the right to strike, against the Government of the United States..." And Section 7116(b)(7)(A) of Title V makes it an unfair labor practice for a federal union to call or participate in a strike.

Therefore, there is no reason that TSOs should not have the same collective bargaining rights as other DHS employees.

Like most other DHS employees, TSOs must have access to an adverse action and appeal process that treats employees fairly and ensures that their due process rights are protected. TSOs must be given reasonable notice and an opportunity to make a meaningful reply before disciplinary action is taken against them. TSOs must be able to appeal agency actions to an independent adjudicator whose decisions are subject to judicial review and agencies should bear the burden of proving just cause for actions taken against employees. In a workplace without these bedrock protections, employee morale will suffer, which in turn will adversely affect efficiency.

Basic fairness, including equity, security and stability of the TSA workforce compel Congress to provide collective bargaining rights for the only major workforce at DHS denied these rights. Ending years of TSA employee turnover and turmoil will result from this important correction by Congress.

NTEU strongly supports repeal of Section 111(d) of ATSA as approved by the House of Representatives in H.R. 1 and included in S. 4. Reversing this unequal treatment of TSOs will help restore morale and strengthen mission and personnel dedication at the Department of Homeland Security. NTEU wants for TSOs the same thing I believe Congress wants -- a workplace where employees can be successful and do quality work in an environment where they will be treated with dignity and respect and supported in achieving the agency's critical mission.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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March 2, 2007

Honorable Daniel Akaka, Chairman
Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia
United States Senate
Washington, DC

Dear Chairman Akaka:

As the President of the Federal Law Enforcement Officers Association (FLEOA), representing over 25,000 Federal law enforcement officers, I am writing to you regarding a potential threat of a veto of vital law enforcement legislation (H.R. 1 and S. 4) that Congress is about to pass, because of the provision giving TSA employees collective bargaining rights.

We have sat back in silence and watched the on-going debate over collective bargaining rights for TSA employees, since this does not directly impact our members. However, now that this issue has the potential to stop implementation of the final 9/11 Commission Recommendation Bill, we deem it appropriate to weigh in.

The absurd premise put out by both DHS and TSA that being a union member precludes someone from serving our country in a national security capacity is unacceptable. There are currently hundreds of thousands of law enforcement officers on a Federal, State and local level who are all members of a union and have collective bargaining rights. This has never impacted their ability to react to terrorist threats, respond to terrorist incidents or impaired their ability to fulfill their critical mission of homeland security. This was quite evident on September 11, 2001.

FLEOA supports and agrees with the recent statement of AFGE President John Gage, when he stated, "The notion that granting bargaining rights to TSOs would result in a less flexible workforce is just plain nonsense, and is also an insult to the hundreds of thousands of dedicated public safety officers with collective bargaining rights from Border Patrol Agents to firefighters to Capitol Hill Police."

Senator Akaka, thank you for your support in this matter and your continued support for the entire Federal workforce. You truly are a friend to all of us in Federal law enforcement and we appreciate all of your efforts on our behalf.

Sincerely,

Art Gordon, National President

1 of 1 DOCUMENT

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March 5, 2007 Monday
Final Edition

SECTION: Editorial; A14

LENGTH: 437 words

HEADLINE: Sensible Security Fixes;
What the Senate's latest homeland security bill does, and doesn't, include

BODY:

ALONG-DORMANT battle over the Department of Homeland Security's labor practices resurfaced last week in the Senate. The White House threatened to veto a generally sensible homeland security bill that was based on the Sept. 11 commission's recommendations, because of a provision that would allow Transportation Security Administration employees to engage in collective bargaining. In the Senate, 36 Republicans are promising to sustain that decision by President Bush.

He shouldn't veto, and they shouldn't vote to sustain if he does. Other employees of the Department of Homeland Security enjoy the benefits of collective bargaining without endangering Americans' safety. Sen. Joseph I. Lieberman (I-Conn.), who sponsored the bill, points out that TSA employees have unnecessarily limited access to redress, which contributes to the TSA's high turnover, high absenteeism and low morale. Meanwhile, there's a lot more to the bill than this one provision.

The legislation, for example, proposes to distribute federal anti-terrorism grants to cities and states according to a formula that the bill's backers say will put the most money into regions that face the most risk. It would thus direct more money to high-risk cities such as Washington than would the House version. That's good but not good enough; the bill still requires that every state receive some money, regardless of risk. We hope the Senate reconsiders this wasteful formulation in coming days, especially after the farcical example of last year's Homeland Security grant-giving -- marked by huge declines in funding for New York City and Washington and huge increases for cities such as Louisville.

On the other hand, the bill contains a range of solid proposals -- from grants to ease communication among first responders to measures that would promote intelligence sharing. The bill's sponsors also exercised good sense when they excluded a requirement that all sea cargo containers be scanned for harmful materials before entering the United States. This bad idea made its way into the House version of the bill, its supporters claiming that it reflected the will of the Sept. 11 commission when in fact the panel supported no such measure. Requiring 100 percent scanning would be likely to disrupt trade and inflict massive costs on businesses and consumers with meager benefits. A pilot program testing the mere feasibility of scanning all containers is far from complete. If 100 percent scanning stays out of the legislation and Congress sends the money to areas that really need it, President Bush ought to forgo the politics and sign the bill.

LOAD-DATE: March 5, 2007