

Transportation Security Administration and Transportation Security Officers

Background

Following September 11, 2001, Congress passed and President Bush signed the Aviation and Transportation Security Act (ATSA) creating the Transportation and Security Administration (TSA) and federalizing the duties of screening passengers and baggage at airports into the position of Transportation Security Officer (TSO). Although this was a prime opportunity to establish a highly-trained, well-paid and fully-empowered professional public workforce, TSA management instead took ATSA as a blank check to create its own management system irrespective of the widely accepted protections afforded to most workers by the rest of the federal government. Without enforcement of labor protection laws that ensure that workers are treated fairly, that the workplace is safe so that workers do not suffer injuries and that workers are protected against retaliation from supervisors when they blow the whistle on security breaches, national security is jeopardized rather than enhanced. Through broad judicial and Merit Systems Protection Board (MSPB) interpretation of ATSA, TSA was given the ability to prevent independent oversight of decisions affecting employees, leaving workers with no alternative but to seek remedies from the very management that created the problem in the first place. The power of TSA management regarding TSOs is almost totally unchecked. As a result, the poor working conditions, low morale and high injury rate at TSA have resulted in one of the highest levels of attrition and workers' compensation claims in the federal government.

After more than five years of second-class treatment despite the first-class job they perform every day protecting the flying public, TSOs working at our nation's airports are at the cusp of a historic legislative victory that could restore their collective bargaining and other labor rights. Under the leadership of House Homeland Security Committee Chair Bennie Thompson (D-MS) and Homeland Security Committee member Rep. Nita Lowey (D-NY), the House granted TSOs the same labor rights as other TSA workers in the 9-11 Commission bill very early in the 110th Congress. AFGE calls upon the Senate to follow the lead of the Congress and pass this legislation which is vital to our nation's security.

Systematic Denial of Worker Rights

Recent administrative and judicial decisions interpreting ATSA have resulted in few on-the-job protections for TSOs. ATSA requires the TSA administrator to implement the Federal Aviation Administration personnel management system. However, a statutory footnote allows the Administrator to create unique personnel policies for the largest portion of the TSA workforce—TSOs. At every turn TSA has taken positions against TSOs that deny them the workplace protections afforded to other federal employees. Often these restrictive

interpretations of ATSA are supported by judges, leaving TSOs with no independent review or analysis of their claims and without enforceable protections.

A few examples of the pervasiveness and extent of these negative decisions include:

- Refusal to honor the First Amendment right of freedom of association, resulting in screeners being fired for simply talking about the union and posting and distributing AFGE union literature during break times.
- TSA has refused to hold itself accountable to the Rehabilitation Act and is therefore not required to make reasonable accommodations for workers with disabilities, including diabetes and epilepsy. This results in discrimination against workers on the basis of their disability.
- Although Congress clearly indicated that the veteran's preference honored by the rest of the federal government also applied to screeners, the TSA has refused to apply veteran's preference in promotion and reduction-in-force decisions. Moreover, even though other federal agencies apply veteran's preference to both those who retired from the military and those who leave active duty, TSA has redefined what it means to be a veteran—only retired military personnel are awarded whatever veteran's preference TSA management chooses to give.
- Disciplining TSOs for using accrued sick leave benefits for documented illnesses.
- Paying 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.
- Denial of enforceable whistleblower protections.

TSOs should be guaranteed the same workplace securities that other TSA employees and other federal employees enjoy. Denial of the meaningful ability to enforce the most basic worker rights and persistent inadequate staffing have taken their toll on the TSO workforce. TSOs are subject to extensive 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 jeopardized.

“Opting-Out” of Public Safety and Responsibility

In the aftermath of September 11, 2001, the public and Congress recognized that the jobs of airport screeners are essential to our security and federalized those jobs in ATSA. It was believed that by providing screeners with adequate pay, benefits and training, a professional and dedicated career workforce would be created. However, although very few airports have even shown an interest in returning to the system of private screeners that put our country at risk, a few members of Congress and the private companies seeking fast and large profits are proposing that airports be allowed to “opt-out” from the use of federal screeners and replace them with private screeners. Under these proposals, private companies will be shielded from liability if they are certified by the appropriate authority. The legislation under consideration could easily allow private companies to be shielded from liability even if there is a failure to supervise screeners, a failure to train screeners, or a failure to properly staff checkpoints. AFGE successfully blocked an attempt to include these privatization schemes in the DHS reauthorization bill considered by the House Homeland Security Committee in 2006.

No "Cap" on Security

Despite the pressing need to fully staff our nation's airports with sufficient numbers of TSOs to provide security and expedite travel, the Bush administration has set an artificial cap of the number of full-time TSOs nationwide. The current 45,000 cap has not only led to longer lines, it has also had a great adverse impact on TSOs, who face constant mandatory overtime and increased risk of injury while they try to do their jobs with too few people. With very strong bipartisan votes, the Senate twice supported legislation introduced by Senator Frank Lautenberg (D-NJ) to remove the TSO cap and allow TSA to hire the number of full-time TSOs necessary to provide air safety. Although legislation repealing the TSO cap did not become law in 2006, AFGE will continue our efforts to enact the measure during the 110th Congress.

Conclusion

AFGE will work with our allies in Congress to support legislation that will restore worker protections to federal screeners to ensure that they have the same protections as other federal employees, including the right to federal court review of constitutional violations, to protection from discrimination based on disability, and meaningful whistleblower protections.