



SENATE REPUBLICAN

POLICY COMMITTEE

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Providing Collective Bargaining Rights to TSA Employees Undermines National Security

Introduction

A committee amendment to S. 4, the 9/11 Commission recommendations bill, would undermine national security by providing airport security screeners with collective bargaining rights. The Administration is expected to issue a veto threat over this provision, which was adopted in committee on a strict party-line vote of 9-8.¹ It is worth noting that this amendment – to the 9/11 Commission bill, as it was reported to the Senate – was not recommended in the 9/11 Commission Report. Rather, this amendment is antithetical to the very purpose of the Transportation Security Administration (TSA), which was designed to make our country more secure against terrorism. Senate Republicans want national security to remain the central focus of this agency.

Why the S. 4 Provision Undermines National Security

Shortly following September 11th, and in anticipation that terrorists would exploit any existing routine screening procedures, the TSA was created to be a nimble agency. The head of TSA has the authority to “employ, appoint, discipline, terminate, and fix the compensation, terms and conditions of employment”² for transportation security officers. This authority permits the agency head to reject collective bargaining, and establish instead a compensation system and workforce rules that best meet national security requirements.

A disruption in normal, secure travel helps accomplish terrorists’ objectives. That is why TSA’s current authority permits it to shift personnel to meet security needs and travel demands. Consider a recent incident in Canada, a nation whose air security system does not have the flexibility like that granted to the TSA. Last Thanksgiving, as part of a labor dispute, “passenger luggage was not properly screened – and sometimes not screened at all” as airport screeners engaged in a work-to-rule campaign, creating long lines at Toronto’s Pearson International airport.³ A government report found that to clear the lines, about 250,000 passengers were rushed through with minimal or no screening whatsoever. One Canadian security expert was

¹ Associated Press, “Bush May Veto Antiterrorism Bill,” February 27, 2007.

² The Aviation and Transportation Security Act of 2001, P.L. 107-71, Section 111(d).

³ CBC News, “Luggage Security Lax During Pearson Labour Dispute: Report,” December 20, 2006.

quoted as saying that “if terrorists had known that in those three days that their baggage wasn’t going to be searched, that would have been bad.”⁴

Existing Flexibility Essential to Thwarting Terrorism and Addressing Emergencies

The current airport screening system provides TSA the flexibility needed to respond quickly to airport security and demand needs. Under current law, TSA has established security protocols on a national and international basis. These allow TSA to quickly shift its employees based on intelligence and airport traffic demands. Under collective bargaining, security protocols might have to be negotiated with multiple unions on an airport-by-airport basis. To add to the complexity, the provision in S. 4 could mean the implementation of up to 450 unions, one at each airport that TSA currently operates. While an effort could be made to seek one union for the representation of all airport security screeners, that decision would be left to the Federal Labor Relations Authority, not TSA, and based on labor law and not necessarily in the interest of security.

To be effective, TSA must continually change its security systems to assure that they are unpredictable. The flexibility currently afforded TSA makes this possible. Under collective bargaining, if TSA were required to negotiate with multiple unions for every change in circumstance, it would take away from the agency’s ability to rapidly respond to threat information. Pre-negotiation would likely be required under collective bargaining to define anticipated emergency circumstances, which would be impossible in the current global threat environment.

A recent example shows how critical this is: During the August 2006 United Kingdom air bombing threat, over the course of 12 hours, TSA’s most senior levels took intelligence based on classified information that was still unfolding and developed new security protocols. At 4:00 a.m., when TSA workers arrived for the first duty on the East Coast, they were briefed and trained on the new security procedures that they implemented immediately. Passengers in the U.S. and the U.K. saw two completely different effects of the change. In the U.K., dozens of flights were cancelled, travelers delayed, and travel backups ensued for days. In the U.S., no cancellations occurred as a result of the change.⁵

Another example: Last year when Lebanon erupted into violence and fighting broke out, TSA was able to rapidly respond to expedite the evacuation of thousands of Americans in Lebanon and thousands of other legitimate refugees. In response to the need, TSA deployed 27 of its officers to Cyprus to assist Cypriot airport authorities with verifying passenger identification documents and screening the large volume of evacuees. Additionally, over 100 employees were deployed to domestic airports to augment operations at the arrival airports of these evacuees. There was minimal impact on domestic airports as a result of the evacuations.

A further example: During the December 2006 snow storm in Denver, local TSA employees were unable to get the airport. Because of their ability to respond quickly on short notice, TSA was able to deploy 55 officers from Las Vegas, Salt Lake City, and Colorado Springs to Denver. This deployment allowed TSA to open every security lane around the clock at the airport until

⁴ CBC News.

⁵ TSA, “Case Study – August 10, 2006, UK Terror Plot Against US Airlines, February 27, 2007.

they were back to normal operations.⁶ And, during the 2005 hurricane season, TSA changed the nature of employees' work – and the location of their work – “to flexibly respond to these emergencies.”⁷

Under S. 4 as it comes before the Senate, redeployment decisions would be subject to collective bargaining, and could be subject to binding arbitration review by a third party, who well may have no government or security experience but who, nonetheless, would have the authority to reverse TSA security decisions.

TSA recognizes that protecting national security is based on a highly-skilled, well-trained workforce. But, with collective bargaining, that, too could be jeopardized. The agency's personnel system is based on performance, not seniority, and is designed to reward “the best and the brightest.” It is based on technical competence, readiness for duty and operational performance. It continually trains and upgrades the skills of its officers, making them available for higher pay and advancement along the way. Yet collective bargaining could curtail opportunities for advancement as training would all have to be negotiated with unions, even when the employees request training. Under collective bargaining, training could be subject to negotiation on need, design, order of training delivered, timeline, and method of delivery.

National Security Warrants Collective Bargaining Limits

Prior to enactment of the law that created TSA (the Aviation and Transportation Security Act of 2001), this nation's air passenger and cargo screening capability was compromised of a decentralized and fragmented system involving over 400 airports and over 100 different contractors overseeing day-to-day security operations. The law intended to unify the screener workforce, moving from contract screeners with no national program of operating standards to a single, unified workforce. Congress voted in favor of a progressive human capital system for TSA in recognition that special flexibility was warranted to hire, train, and deploy security officers to protect passengers against terrorist threats.

The issue of collective bargaining is not a new one for this agency. The issue has repeatedly been evaluated – and repeatedly rejected. It was not included when the agency was created. It was rejected again when the Department of Homeland Security was created in 2002, and again by the head of the TSA in 2003. Additionally, collective bargaining was considered and the current ruling upheld by multiple courts and the Federal Labor Relations Authority from 2002 to 2006.

This restriction is not unique to TSA. Other federal agencies that collect and respond to intelligence in an effort to address national security, such as the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), and the Secret Service, all have the same restriction. This was done as an acknowledgement that sensitive security information need only be released to those with a need to know. Collective bargaining, on the other hand, would

⁶ TSA, “TSA's Current Human Capital Authorities Drive Security Performance,” February 16, 2007.

⁷ Office of Management and Budget (OMB), “Statement of Administration Policy on H.R. 1 – Implementing the 9/11 Commission Recommendations Act of 2007,” January 9, 2007. See: <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr1sap-h.pdf>.

require the release of sensitive information to outside individuals who serve as negotiators and arbitrators, increasing the risk of unauthorized release.

Cost Drain on National Security Efforts

As TSA currently does not collectively bargain with its workers, the agency would need to build the infrastructure to implement the requirement in S. 4. TSA estimates the first-year start-up cost to create the infrastructure necessary to support collective bargaining at its headquarters to be \$160.5 million.⁸ This impact is equivalent to permanently closing all checkpoint screening lanes at the airports in Chicago, Los Angeles, Boston, and JFK in New York.

Responding to Critics' Charges About Treatment of TSA Workers

Critics charge various employment problems, such as delays in pay and no means to address employee grievances. However, it is important to recognize that the TSA implemented a number of workplace-quality initiatives in 2005 designed to incentivize the position of the transportation security officer (TSO) – programs that would not be allowed under collective bargaining's one-size-fits-all approach. For example, the TSO Career Progression Program provides career track and advancement opportunities for TSOs. This program makes available promotion opportunities with higher pay based on experience, training, and favorable performance reviews. TSA utilizes a pay-for-performance system, developed with input from TSOs and managers, to attract and retain top candidates. In Fiscal Year 2006, top TSOs received a 5-percent base pay increase on top of a 2.1 percent cost-of-living adjustment, and a \$3,000 bonus. In FY 2006, TSA paid out \$42 million in incentive pay.

Another incentive provided is health benefits for part-time TSOs at the same employee premium paid by full-time TSOs. These programs have reduced the TSO voluntary turnover rate each year since their implementation. Additionally, TSA has established a collaborative, integrated conflict management system in airports. The Model Workplace Program consists of employees and managers to address and resolve a variety of workplace issues. TSA also has a program that allows employees to select peers to hear their grievances. And finally, TSOs have the right to appeal adversarial proceedings through a disciplinary review board, and have the right to representation (including union representation) at these hearings.

Conclusion

The Aviation and Transportation Security Act of 2001 appropriately recognized that special flexibility for personnel performing key homeland security roles is critical. Enacted following the terrorist attacks of September 11, the law gave the head of the Transportation Security Administration the ability to forego collective bargaining in the name of national security. Now legislation threatens to remove this key flexibility. Removing this flexibility from TSA was not recommended by the 9/11 Commission and would diminish our country's national security system. TSA's record is a good one. Changing course now is a risk this nation cannot afford to take.

⁸ Transportation Security Administration (TSA), "Budget Implications of Collective Bargaining," unpublished data, February 23, 2007.