

BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF:)
)
FIRSTLINE TRANSPORTATION)
SECURITY, INC.,)
)
Employer,)
)
and)
)
INTERNATIONAL UNION, SECURITY,)
POLICE AND FIRE PROFESSIONALS)
OF AMERICA (SPFPA),)
)
)
Petitioner.)

Case No. 17-RC-12354

**EMPLOYER'S BRIEF IN SUPPORT OF ITS REQUEST
FOR REJECTION OF DECISION AND DENIAL OF PETITION**

Comes now the Employer, FirstLine Transportation Security, Inc. ("Employer" or "FirstLine"), through counsel, pursuant to the National Labor Relations Board's ("NLRB") July 7, 2005 Notice and Invitation to File Briefs, and respectfully requests that the NLRB reject the May 27, 2005 decision ("Decision") of the Regional Director, Region 17, and deny the petition.

I. INTRODUCTION

Petitioner, International Union, Security, Police and Fire Professionals of America ("SPFPA"), filed with the NLRB an RC petition seeking to be certified as the representative of all screeners employed by the Employer at the Kansas City International Airport ("MCI"). The Regional Director directed an election in his Decision. The Employer requested and received a review of the Decision on the grounds that there are substantial questions of law and policy raised with respect to the NLRB's jurisdiction because of the absence of officially reported NLRB precedent. The Employer again herein submits that the NLRB is statutorily barred from exercising jurisdiction over its screener employees or, in the alternative, that it should decline to assert jurisdiction in the interest of national security and safety.

II. FACTUAL BACKGROUND

In response to the terrorist attack on the United States on September 11, 2001, Congress passed the Aviation and Transportation Security Act (“ATSA”), 49 U.S.C. §114, making airport security a direct federal responsibility and creating the Transportation Security Administration (“TSA”) as the entity which would manage all passenger and baggage security screening at the nation's commercial airports. Congress also provided that the head of the TSA, the Under Secretary of Transportation for Security (the “Under Secretary”), would be responsible for the training and employment standards of security screening personnel. 49 U.S.C. §§114(b)(1), 114 (e).

Initially, the actual work of screening passengers and property was done by employees of the federal government. Section 110(b) of ATSA, however, permitted the Under Secretary to contract with a “qualified private screening company” to perform screening operations upon application of an airport operator during a two-year pilot period at no more than five airports. 49 U.S.C. §44919. MCI was one of five airports chosen for the statutory pilot program which became known as the “PP5 Pilot Program.” The other four airports participating in the program are located in Tupelo, Mississippi; Jackson Hole, Wyoming; San Francisco, California; and Rochester, New York.

Section 44919(f) of ATSA defines a “qualified private screening company” as follows:

A private screening company is qualified to provide screening services at an airport participating in the pilot program under this section if the company will only employ individuals to provide such services who meet all the requirements of this chapter applicable to Federal Government personnel who perform screening services at airports under this chapter and will provide compensation and other benefits to such individuals that are not less than the level of compensation and other benefits provided to such federal government personnel in accordance with this chapter.

FirstLine was the “qualified private screening company” chosen to provide screener employees to the TSA at MCI. (Tr. 54).¹ While FirstLine is a private employer, its screener employees are still directed by the TSA and subject to its policies and guidelines. (Tr. 16). As a summary of the nature of a screener’s employment with FirstLine, FirstLine plays some role in the initial recruitment and job search process. (Id.). Once an applicant pool has been gathered, however, the TSA Office of Personnel Management must certify that each applicant meets TSA standards before they are offered employment. (Tr. 17). In making such certification decisions, the TSA utilizes the same procedures and policies which it employs at all of the approximately 450 commercial airports around the country, both private and federal. (Id.).

Out of the pool of TSA-certified applicants, FirstLine can then hire a number of individuals. At that point, each newly hired screener goes through a training process which is administered by “TAIs,” individuals who are certified as “trainers” by the TSA. (Tr. 18-19). The TSA has established the training curriculum to be followed by the TAIs, and local TSA training managers observe and oversee the training process. (Tr. 19). If the newly hired screeners pass this training process, then the TSA certifies them as security screeners pursuant to Section 44901 of ATSA, and they may begin work. (Tr. 20, 57).

When the screeners actually begin to perform passenger and baggage screening functions, the control and oversight of the TSA continues. FirstLine provides basic human resources functions such as uniforms, payroll, and various paperwork. (Tr. 15, 20). Then FirstLine makes its workforce available to the TSA to be used at its discretion. (Tr. 20). Specifically, FirstLine submits the direction of its screeners to the MCI Federal Security Director and his staff. (Id.). TSA screening managers at MCI (as at all other airports) are actually in charge of the supervision

¹ Relevant parts of the record are attached hereto as Exhibit A.

and oversight of the screening operators, determining the number of screeners needed at certain locations at any given time. (Tr. 21).

Additionally, the TSA sets the pay rate parameters for FirstLine employees. (Tr. 23-24). The equipment used by FirstLine employees in passenger and baggage handling is provided and repaired by the TSA. (Tr. 30). Aside from the FirstLine patches on the FirstLine employees' shirt sleeves (which may be removed and replaced with TSA insignia), there is no functionality difference between a FirstLine screener and a TSA federal employee screener. (Tr. 27).

III. LEGAL ANALYSIS

A. The NLRB is statutorily barred from asserting jurisdiction by the Under Secretary's determination that screeners are not entitled to engage in collective bargaining.

ATSA conferred sole and exclusive discretion on the Under Secretary to determine conditions of employment for security screening personnel. See 49 U.S.C. §114(n). Pursuant to that authority, on January 8, 2003, the Under Secretary issued a Memorandum regarding the collective bargaining rights of security screeners which stated in pertinent part:

I hereby determine that individuals carrying out the security screening function under section 44901 of Title 49, United States Code, in light of their critical national security responsibilities, shall not, as a term or condition of their employment, be entitled to engage in collective bargaining or be represented for the purpose of engaging in such bargaining by any representative or organization.

Joint Exhibit 1. The Under Secretary's authority was recognized by the Federal Labor Relations Authority ("FLRA") in United States Dep't of Homeland Sec. v. AFGE, AFL-CIO, 2003 WL 22669101, 59 FLRA No. 63 (2003) (Joint Exhibit 2).

The clear language of ATSA includes the PP5 Pilot Programs within the authority of the Under Secretary. The statute provides that "[t]he Under Secretary of Transportation for Security shall provide for the screening of all passengers and property" and that the screening "shall be carried out by a federal government employee . . . except as otherwise provided in Section 44919

or 44920” 49 U.S.C. §44901(a). This incorporation by reference of the Section 44919 PP5 Pilot Programs clearly makes the Under Secretary’s January 8, 2003 Memorandum applicable to any and all screeners working pursuant to ATSA. In other words, under his clearly granted authority, the Under Secretary has determined that federal and private screening employees are not “entitled to engage in collective bargaining or to be represented for the purpose of engaging in such bargaining by any representative or organization.” Joint Exhibit 1.

From an objective policy standpoint, ATSA’s equal treatment of all screener employees – whether private or federal – is sensible. As discussed above in more detail, private and federal screeners perform the same functions and are subject to the same control and policies of the TSA. In fact, the TSA directs the day-to-day duties of private screener employees such as those employed by FirstLine. FirstLine employees are hired and trained pursuant to TSA policy and direct TSA oversight, and this oversight continues throughout their employment. As such, there exists no legal or factual basis to distinguish between federal and private employers, and the Under Secretary’s January 8, 2003 Memorandum has clearly spoken to the collective bargaining rights of both. Respectfully, it is not within the NLRB’s purview to act contrary to the clear language of ATSA and the Under Secretary’s mandate.

1. The Regional Director’s determination that the NLRB is not barred from asserting jurisdiction is not well-supported.

In arguing that the Under Secretary’s Memorandum should not apply to private screeners, the Regional Director appears to rely primarily on the argument that Section 44901 of ATSA removes private screeners “from the boundaries of Federal Government service” See Decision at 7. Simply, this interpretation is not well-reasoned. The language of Section 44901 includes private screeners within the parameters of the TSA and the Under Secretary’s authority. Again, it states that the covered screening activities “shall be carried out by Federal Government

employees . . . except as otherwise provided in Section 44919 (which includes the private screeners).” 49 U.S.C. §44901(a). The clear language of the statute provides that the screening will be performed by both federal and private employees, bringing both within Section 44901’s definition of what individuals will be performing the covered work and subject to the Under Secretary’s authority. Section 44901 is inclusive, not exclusive.² The myriad of shared job functions, requirements, and standards (which are discussed above and in the Regional Director’s Decision (see Decision at 5)) provide further support for the proposition that Section 44901 is meant to apply to private screeners.

Further, the Regional Director’s references to the TSA’s “neutral stance” on its website and in its June 2004 Guidance (which are by no means controlling authority) fail to support his argument.³ The TSA had previously taken a neutral stance on the issue of the organization of private screeners. See Decision at 8. However, it is no longer correct to interpret the TSA’s stance on the issue as “neutral.” In testifying on July 28, 2005 before the U.S. House of Representatives, Committee on Homeland Security, Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity, TSA Acting Deputy Administrator Thomas Blank submitted telling written and verbal testimony. When asked about TSA’s policy on the collective bargaining rights of federal and private screeners, Deputy Administer Blank answered:

What we have said and our policy has been is that screeners may not, whether they are federal or private, engage in collective bargaining. We will not engage in collective bargaining. But if the private sector screeners choose to organize themselves into a union, we have no policy and made no statement against that.

² This fact also directly contradicts the dissent’s statement that the Under Secretary’s Memorandum “makes no reference to employees of private screening companies.” See FirstLine Transp. Sec., Inc. v. SPFPA, 344 NLRB No. 124, 2005 WL 1564866, at *1 (NLRB June 30, 2005) (Liebman, dissenting).

³ The dissent also refers to the TSA’s neutral stance. See FirstLine Transp. Sec., Inc., 2005 WL 1564866 at *1.

Committee on Homeland Sec., Subcomm. on Econ. Sec., Infrastructure Protection, and Cybersecurity, 109th Cong. 38 (July 28, 2005) (statement of Thomas Blank, TSA Deputy Administrator) (emphasis added) (a copy of which is attached hereto as Exhibit B).⁴ Similarly, in his written statement, Deputy Administrator Blank provided:

As ATSA requires, these private screeners must meet all requirements and qualifications applicable to Federal screeners concerning hiring and training, pay and benefits for private screeners must not be lower than Federal screeners, private screeners must be overseen by Federal Government supervisors, and screening services must be equal to or greater than the level provided by Federal screeners. TSA regards security as non-negotiable and will remain faithful to its core mission by ensuring that [private screeners] comply not only with the specific terms of ATSA but also other applicable statutory and other Federally-mandated requirements that affect aviation security.

Id. at 35, written statement at 8 (emphasis added). Deputy Administrator Blank could not have been any clearer in relaying the TSA's belief that its ban on collective bargaining for federal screeners should equally apply to private screeners.

Finally, the Regional Director's reliance upon Management Training Corporation, 317 NLRB 1355 (1995), is unfounded. See Decision at 8-10. The Regional Director references this Decision with respect to the question of whether the Employer, because of its relationship with the TSA, lacks sufficient control over labor relations to engage in meaningful bargaining. First, that issue has significance and should be considered by the NLRB at this stage. As discussed above, the TSA has complete operational control over the Employer's screening workforce, and the Employer will not be able to avoid such control, even in the presence of the collective bargaining agreement. This fact should not be ignored at this point. Second, the Regional

⁴ Deputy Administrator Blank's final statement regarding employees organizing themselves into a union is not relevant to the current issue. The right of the employees to so organize is beyond the purview of the NLRB, whose jurisdiction extends only so far as employees' right to collective bargaining is concerned. See 29 U.S.C. §159. It is also made irrelevant by the language on the ballots in the instant matter: "Do you wish to be represented for the purposes of collective bargaining by . . ."

Director's blind reliance on Maintenance Training Corporation ignores the significant distinguishing factors which are at the essence of the current dispute. In the unique environment of ATSA, the TSA's control of private screeners, and the post-September 11 security and safety concerns, the NLRB must look beyond the basic definition of "employer" and jurisdictional monetary standards. The crucial issues in the instant jurisdictional argument are the new laws and new external factors, and it is for these very reasons that the NLRB should reject the Regional Director's Decision.

B. In the alternative, the NLRB should decline to assert jurisdiction in the interest of national security and safety.

1. Public policy in favor of national security and safety mandates a uniform treatment of the collective bargaining issue.

As explained above, the Under Secretary has determined that employees performing the security screening function at our nation's airports, because of the critical national security and safety responsibilities of their position, should not be entitled to engage in collective bargaining. Again, the Under Secretary's authority in this regard has been upheld by the FLRA. See Joint Exhibit 2.

The PP5 Pilot Program has resulted in a security screening system at our nation's airports which includes both private sector and federal employees. Those airports that are a part of the PP5 Pilot Program have transportation security screeners who are employed by private contractors like FirstLine. Those airports not in the Program continue to use federal employees to perform their pre-departure screening. Thus, unless the same employment standards are applied to both private sector security screeners and transportation security screeners who are federal employees, the national security and safety concerns which provoked the Under Secretary's decision to prohibit collective bargaining for security screeners will only be addressed at the airports using screeners who are federal employees.

Public policy would seem to argue in favor of an integrated, "transparent" system for pre-departure screening at the nation's airports. ATSA conferred sole and exclusive discretion on the Under Secretary to determine the conditions of employment for security screening personnel, and his determination was that collective bargaining would jeopardize our national security and safety. It makes little sense to allow collective bargaining for a private sector security screening program administered by the TSA when the TSA clearly believes a prohibition on collective bargaining for federal employees doing the same job is necessary for our national security and safety. As suggested above, there exists no statutory authority or public policy argument to distinguish between federal and private screeners. In passing ATSA, Congress recognized the important national security and safety interests involved. Surely, this recognition of the interest at stake and the collective bargaining implications was made with respect to all screening employees. Respectfully, a decision by the NLRB to assert jurisdiction in this case would contradict a stated public policy that allowing collective bargaining in our transportation security screening system will threaten our national security and safety.

2. The legislative history of ATSA demonstrates Congress' recognition of the critical national security and safety responsibilities of screeners.

"[T]he legislative history of the ATSA envisions a TSA where no control over the terms and conditions of employment lies in the screener's ability to bargain collectively. Its history supports the theory that the Under Secretary has unfettered discretion." Alex C. Hallett, An Argument for the Denial of Collective Bargaining Rights of Federal Airport Security Screeners, 72 Geo. Wash. L. Rev. 834, 854 (2004). "The pervasive feeling of Congress at the time of passage was that national security was the paramount concern." Id. at 852.⁵ The TSA clearly set

⁵ While describing the collective bargaining repercussions vis-à-vis screeners, Senator Frist Hollings (D-S.C.) stated: "You cannot let the security people strike on you. They are like the FBI. Do you think we can have the FBI strike or the senators go on strike?" 147 Cong. Rec. 10,029 (2001). Similarly, comparing the duties of screeners to

forth the critical nature of screeners in the security and safety of the country in its January 9, 2003 brief to the FLRA in response to the American Federation of Government Employees' petition for an election:

Security screeners carry out critical functions in providing maximum security to air travelers, airports and airplanes. The security screener serves an essential role in the Federal government's implementation of more stringent security guidelines in the aftermath of September 11, 2001. As Congress noted, "the terrorist hijacking and crashes of passenger aircraft on September 11, 2001, which converted civil aircraft into guided bombs for strikes against the United States, required a fundamental change in the way it approaches the task of ensuring the safety and security of the civil air transportation system." H.R. Conf. Rep. No. 107-296 at 54 (2001). TSA security screeners serve in a key national security capacity, providing frontline security by screening baggage, cargo and passengers. Screeners are responsible for identifying dangerous objects in baggage, cargo and on passengers and preventing those objects from being transported onto aircraft. They also use diverse, cutting edge electronic detection and imaging equipment.

Because the role of security screeners is central to TSA's national security mission of ensuring airport and aircraft security and thereby preventing acts of terrorism in the United States, virtually all decisions regarding the checkpoints from the specifics of scheduling screeners to how they perform their job functions, implicate security directly or indirectly. Even job attributes which might be described as "customer service" rather than directly security related are critical to rendering security measures acceptable to the traveling public and making commercial air travel both secure and, ultimately, feasible. Accordingly, early in its developments, TSA determined that because of its vital national security mission it was critical that screener employment policies and practices be established centrally for nationwide application. To that end, all universally applicable employment policies are established at TSA headquarters in Washington, D.C. Similarly, all operational policies, such as screener staffing and the Standard Operating Procedures (SOP) for the security screening function, are established at Headquarters.

other employees who provide essential national security services, Representative Harold Ford (D-Tenn.) stated: "Let us have an airport security bill that protects the public. We have a Capitol Hill police, a Secret Service, security for cabinet members. All of them are federal law enforcement officials. The public deserves the same at our airports." Id. at 7,776.

Agency's Brief at 4-5, United States Dep't of Homeland Sec. v. AFGE, AFL-CIO, 2003 WL 22669101, 59 FLRA No. 63 (Case No. WA-RP-03-0023) (2003) (emphasis added) (some citations omitted).⁶

3. Collective bargaining would conflict with the critical national security and safety responsibilities of the screeners.

As discussed at length above, Congress passed ATSA with an eye toward greatly enhancing the nation's security and safety. Congress noted the new terrors facing the country and the need to adopt novel, bold approaches to protect against these dangers. For the reasons set forth below, in this new, unique environment, collective bargaining does not comport with fully efficient and comprehensive screening operations.

If the Union were allowed to represent the Employer's screeners, the Employer would be forced to try to balance the security and safety concerns set forth in ATSA with the well-recognized requirements of collective bargaining. Such a balance would be impossible to strike in a manner that satisfied both the provisions of ATSA and the requirements of the Union. To wit, as the NLRB is well aware, it has found many different topics to be mandatory subjects of bargaining. Such topics include, but are not limited to, the following:

Length of workday;⁷

Layoffs and recalls;⁸

Arbitration clauses;⁹

Grievance procedures;¹⁰

⁶ While the TSA brief spoke to federal screeners, the same concerns would apply to private screeners. As discussed above, there exists no functionality differences between the two. Both private and federal screeners follow the TSA Standard Operating Procedures and the direction of FSDs. As such, the security and safety concerns outlined above would apply regardless of the screeners' status. A copy of the brief is attached hereto as Exhibit C.

⁷ Weston & Brooker Co., 154 NLRB 747 (1965), enforced, 373 F.2d 741 (4th Cir. 1967).

⁸ Hilton Mobile Homes, 155 NLRB 873 (1965).

⁹ Electrical Workers v. NLRB, 409 F.2d 150 (D.C. Cir. 1969).

Seniority;¹¹
Promotions;¹²
Transfers;¹³
Drug and alcohol testing;¹⁴
Subcontracting;¹⁵
Work hours;¹⁶
Payroll;¹⁷ and
Attendance Policies.¹⁸

To the extent the Employer and Union had to bargain about such issues,¹⁹ the bargaining would adversely affect the Employer's ability to operate in a manner that would guarantee full compliance with the directives of ATSA. Surely, Congress intended the provisions of ATSA and its protection of security and safety to be complied with fully.

The TSA noted the dilemma between security and safety concerns and collective bargaining concerns which would result from union representation. In its above-mentioned January 9, 2003 brief, the TSA spoke to the risk of allowing collective bargaining for screeners. See Agency's Brief at 7-8. The TSA examined subjects of bargaining such as scheduling, work

¹⁰ Hughes Tool Co. v. NLRB, 147 F.2d 69 (5th Cir. 1945), amending and enforcing, 56 NLRB 981 (1944).

¹¹ United States Gypsum Co., 94 NLRB 112 (1951); Nev-Tun Inc., 310 NLRB 138 (1993).

¹² Id.

¹³ Id.

¹⁴ Johnson-Bateman Co., 295 NLRB 180 (1989).

¹⁵ Fibreboard Paper Prods. Corp. v. NLRB, 379 U.S. 203 (1964).

¹⁶ Harris-Teeter Super Mkts., Inc., 307 NLRB 1075 (1992).

¹⁷ Visiting Nurse Servs. of Western Mass., Inc., 325 NLRB 1125 (1998).

¹⁸ NLRB v. Roll and Hold Warehouse, 162 F.3d 513 (7th Cir. 1998), enforcing, 325 NLRB 41 (1997).

¹⁹ Some of these subjects are addressed in detail in the TSA's Standard Operating Procedures, which must be followed by both public and private screeners. As such, some topics which otherwise would be mandatory subjects of bargaining would not be because of the strict regulations.

hours, and transfers. It noted that, as an employer of screeners, “because of a heightened or new security threat, [it] might need to quickly redesign the screening function which could result in reassignment of passenger screeners to baggage screening or changes in work procedures or schedules for screeners.” Id. In a union setting, an employer would have to notify the union of such actions and, to varying degrees, would have to bargain over the decision, its implementation, or its effects. Id. As the TSA pointed out, these requirements would greatly inhibit an employer’s “ability to respond quickly, discretely, and efficiently to emerging security circumstances.” Id. At the very least, an employer would be forced “to reveal sensitive security information or classified national security information” as a part of the bargaining process. Id.²⁰ An employer of screeners must retain complete flexibility and must be able to respond immediately to any national security or safety needs.²¹ Quite simply, if forced to bargain, an employer would not be able to operate in the proper manner, and the result would necessarily adversely impact security and safety concerns.

An employer’s alternative, however, is also damning. As the TSA set forth, the employer that refuses to bargain over mandatory subjects faces a mountain of grievances (which, along with arbitration procedures, are mandatory subjects of bargaining themselves) and unfair practice charges. Id. The conscientious employer, which errs on the side of compliance with security

²⁰ The NLRB has found that employers must provide a broad range of information to unions, including but not limited to, the following: financial information; information necessary to a union’s processing of a grievance; hiring practices; hours of work; attendance records; work rules; and disciplinary actions. Nielsen Lithographing Co., 305 NLRB 697 (1991); Bell Tel. Lab., 317 NLRB 802 (1995); NLRB v. Postal Serv., 18 F.3d 1089 (3d Cir. 1994), supplemented, 314 NLRB 901 (1994); United States Postal Serv., 308 NLRB 358 (1992); Yeshiva Univ., 315 NLRB 1245 (1994); Praxair, Inc., 317 NLRB 435 (1995); Hobelmann Port Servs., Inc., 317 NLRB 279 (1995). The provision of such information would be detrimental to national security and safety. It would reveal intimate details regarding the structure and operations of employers. Refusing to provide such information, however, would subject an employer to countless unfair labor practice charges. An employer should not be forced to face such dilemmas in this environment.

²¹ In fact, the flexibility and fluctuating nature of the operations themselves are obstacles to certain security and safety threats. Collective bargaining seeks to establish firm practices and patterns of behavior and interaction between employers and employees. Where a union would want to establish such patterns, the lack thereof may be more prudent.

and safety concerns instead of collective bargaining requirements, would be condemned to the burdensome, costly, time-consuming consequences of its actions. The NLRB should not force employers to confront these inevitable consequences.²²

In addition to the above primary concern of being able to operate on a day-to-day basis in full compliance with both the letter and spirit of ATSA, there exist other specific issues representative of the risks associated with allowing collective bargaining. If the Union were allowed to represent screeners, it likely would bargain for a “just cause” provision. The Union would then have input on what constitutes an acceptable screener employee and what acts are subject to discipline. In this environment, as does the Under Secretary, an employer must have complete flexibility and discretion over such topics.

The same holds true for other topics. An employer cannot be forced to make concessions when these concessions would adversely impact national security and safety. A union should not have input into the qualifications for promotions, the calculation and effects of seniority, or layoff and recall procedure, where such decisions “implicate security directly or indirectly.” Id. at 5. Many other specific topics directly or indirectly impact security and safety. The collective bargaining process is a “give and take” procedure, and in this setting, an employer of screeners simply should not (and, in some cases, cannot) be forced to make such consequential concessions. If the Union were allowed to represent these employees, then the Employer would have to make certain concessions, and the NLRB would have created a slippery slope where national security and safety constantly would have to be weighed against the requirements of collective bargaining. The NLRB should follow the well-reasoned lead of the Under Secretary and deny jurisdiction for these reasons.

²² Again, as discussed above at note 6, while the TSA brief spoke to federal screeners, the same concerns would apply to private screeners.

4. The Regional Director's public policy argument is not well-supported.

In his Decision, the Regional Director argues that public policy does not militate in favor of a uniform treatment of the collective bargaining issue, and his argument appears to be three-fold. See Decision at 10-11. First, he states that the “training and adherence to standards” by private screening employees will alleviate certain security concerns. This statement, however, begs the question: Since federal employees are subject to the same training and standards, why did the Under Secretary take the extra step of issuing the Memorandum precluding the employees from bargaining or being represented for such a purpose? Second, the Regional Director points to the fact that federal employees are ensured of receiving federal wages and benefits and that this factor played a role in the denial of certain terms and conditions of employment. While this factor might have played a nominal role in decisions regarding screeners' bargaining rights, strong reliance on it certainly ignores the significant national security and safety concerns which prompted the initial considerations of the bargaining rights of screener employees. These concerns are paramount and should be given much more weight when determining what public policy calls for in the instant matter. Finally, the Regional Director again relies on the TSA's “neutral stance” regarding private screeners' bargaining rights which, for the reasons discussed above, carries little weight.

5. The citations in the Dissenting Opinion to NLRB and Supreme Court authority are unpersuasive.

The dissenting opinion to the NLRB's grant of review points out that Congress has “favored collective bargaining in private and public employment.” FirstLine Transp. Sec., Inc. v. SPFPA, 344 NLRB No. 124, 2005 WL 1564866, at *1 (NLRB June 30, 2005) (Liebman, dissenting). It also cites various authority for the general proposition that national security and safety interests and collective bargaining can coexist in the workplace. Id. at *2. Respectfully,

however, all of the dissent's authority suffers from the same fatal flaw – the decisions were handed down approximately 50 years ago when the last foreign attack on the contiguous 48 states had been commenced in the 19th century. Just as Congress did when drafting ATSA, the NLRB must take a fresh look at new, post-September 11 security and safety concerns.

As the dissent itself points out, the NLRB has already done so in another context. Id. at *2 n.12. In determining whether Weingarten rights should be extended to non-union employees, the NLRB noted that “because of the events of September 11, 2001 and their aftermath, [it] must now take into account the presence of both real and threatened terrorist attacks.” IBM Corp., 341 NLRB No. 148, 2004 WL 1335742, at *6 (NLRB June 9, 2004). The NLRB stated that the threat of terror brought “a new vitality” to certain “policy considerations.” Id. The same reexamination and recognition of change should be applied here. In making this new, comprehensive evaluation, for the reasons outlined above, the NLRB should find that circumstances have changed such that it should deny jurisdiction.

IV. CONCLUSION

ATSA provides for screener employees to perform passenger and baggage screening functions at the nation's airports, and it incorporates by reference private PP5 Pilot Program screeners to be included within this group of security screeners. Moreover, ATSA invests the Under Secretary with the power to establish the terms and conditions of employment for these screeners. Pursuant to this power and in the interest of national security, the Under Secretary has determined that screeners do not have the right to collectively bargain. It is respectfully submitted that the clear terms of ATSA and the Under Secretary's action pursuant thereto preclude the NLRB from asserting jurisdiction in this matter. In the alternative, even if the NLRB were to somehow find that it is capable of asserting jurisdiction, it should decline to do so. Allowing private screener employees to be represented for the purposes of collective

bargaining would create disparate security standards among the nation's airports and would be contrary to vital national security and safety interests. Again, security and safety should be "non-negotiable." It is respectfully submitted that, in the context of these novel and consequential issues, the Regional Director's Decision was not sufficiently reasoned and should be rejected by the NLRB.

Based on the foregoing, it is respectfully requested that the NLRB reject the Regional Director's Decision and deny the SPFPA's petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this pleading has been served upon counsel for all parties in this action, or upon said parties themselves as required by law, by delivering a copy thereof, or by depositing a copy of the same in the United States Mail, with sufficient postage affixed thereto to ensure delivery to the following:

D. Michael McConnell
Regional Director, Region 17
National Labor Relations Board
8600 Farley Street, Suite 100
Overland Park, KS 66212-4677

Mark L. Heinen
Gregory, Moore, Jeakle, Heinen & Brooks, P.C.
65 Cadillac Square, Suite 3727
Detroit, MI 48226-2993

This 3rd of August, 2005.



A handwritten signature in black ink, appearing to read 'M. Heinen', is written over a horizontal line. The signature is stylized and cursive.

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SECURITY, INC.,

Case No. 17-RC-12354

Employer,

and

INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS
OF AMERICA (SPFPA),

Petitioner.

The above entitled matter came on for hearing, pursuant to notice, before **CARLA COFFMAN**, Hearing Officer, at the National Labor Relations Board, Region 17, 8600 Farley, Suite 100, Overland Park, Kansas, on Tuesday, May 3, at 10:05 A. M.

1 Q What are your responsibilities?

2 A I'm responsible for providing the administrative support,
3 the screener work force, to the Transportation Security
4 Administration in Kansas City.

5 Q How long have you been in your position?

6 A One year.

7 Q And are you located here in Kansas City?

8 A We're located at the Kansas City Airport.

9 Q Can you tell us what Firstline Transportation does, what
10 kind of business it's in?

11 A We provide transportation security screeners to the
12 Transportation Security Administration.

13 Q What is the relationship between Firstline and the
14 Transportation Security Administration?

15 A We provide the administrative support, the administrative
16 screener support, finance, payroll, et cetera, that you would
17 -- the typical HR type functions to the local Federal Security
18 director and his staff and then he, in fact, employs that staff
19 in the airport in their screening function.

20 Q How detailed a regulation -- how much regulation does the
21 Federal Security director provide over your operation?

22 A In essence, you know, 100%.

23 Q Can you start us from the very beginning? How do you
24 recruit people? What involvement does the FSD, the federal
25 security director have in that involvement?

1 A Certainly. Originally, when the Private Partnership
2 Program, which is commonly called the PP5 program, when the PP5
3 program was originally started, TSA had 100% control over the
4 assessment and hiring process. That was modified slightly over
5 time and that was that Firstline as a company had responsibility
6 for the advertising of a job fair, if you will, conducting the
7 job fair to the point that there is a very broad this is what a
8 screener does for a living orientation and then the screener
9 candidate would go into a computer bank and sit down and start
10 the application process an that process took them into a TSA
11 third party contractor. So, in essence, at the start of the
12 assessment, we would do the local advertising, we would rent the
13 facility from the job fair, and then, once the candidate
14 actually came to the job fair, they were in the TSA federal
15 system.

16 All testing, all the requirements, pre-assessment
17 requirements to become a screener were all done through the TSA
18 and their third party contractor. Once, that process was
19 completed, that third party contractor would come back to
20 Firstline and say a certain number of those folks, by name, et
21 cetera, were authorized, certified to be offered a position.

22 Q So, at that point, TAS is actually screening or a TSA
23 contractor is actually screening for your applicants? Is that
24 correct?

25 A That is -- that is a correct statement. Now that process

1 was changed slightly in January of 2005. At the start of this
2 year, TSA, as part of their innovation, et cetera, with the PP5,
3 once again, Private Partnership Program, expanded some of the
4 flexibilities to the private sector company. However, all it
5 really did is we still have to go to the third party contractor
6 for the screening, computer screening and computer based
7 testing, and we are now authorized to do some of the pre-
8 assessment process that the third party contractor previously
9 did. However, we still have to go to TSA's Office of Personnel
10 Management and have that person fully certified. So, in
11 essence, they go through the same wickets that they had to go
12 through prior to January, 2005 and so the assessment process
13 really hasn't changed. The standards are all TSA standards.
14 They're federal standards. We do not have the authority to
15 impose any lesser standard than the federal government already
16 requires of its federal screeners.

17 Q Do you know if that is standardized throughout the airports
18 in the United States that they have these contractors?

19 A In fact, it is standardized. There are, plus or minus, 450
20 airports in the country. There are about 150, give or take,
21 federal security directors, and that assessment process rotates
22 through the United States with that third party contractor and
23 is consistent and standard throughout the United States even
24 with providing some of the additional responsibility to us. The
25 TSA oversight and the third party contractor still has pieces

1 and parts of that responsibility. So we're still in the overall
2 TSA schedule.

3 Q Okay. After the screening has taken place, what's the next
4 step in the process?

5 A Firstline makes a job offer to a candidate. With the
6 assumption that the candidate were to accept the job, we conduct
7 a -- Firstline conducts a Firstline orientation that lasts about
8 half or three-quarters of a day. It's typical on boarding, a
9 TSA term, but on boarding, bringing a new person on. All of the
10 standard things that you would expect of any company. Typical
11 of administrative paperwork, some of the EEO type classes, et
12 cetera, that a normal organization would perform.

13 Q Okay. How are the people trained?

14 A I'll give you a little bit of historical background because
15 there's a linkage to that. When the TSA first started back in
16 2001, TSA had a third party contractor, Lockheed Martin, that
17 conducted all of its training and, in fact, today, Lockheed
18 Martin still conducts nearly all of the TSA's training.
19 Approximately a year ago, TSA, for efficiency, realized that
20 Lockheed Martin is just limited by the numbers of folks that
21 they can put out into the system to keep the workforce trained
22 and to bring on new trainers -- correction, new screeners. The
23 TSA came up with a program to provide local screeners that were
24 trained to become what are called -- the acronym is called TAI,
25 which is Transportation Security Administration approved

1 instructor. The local federal security director recommended for
2 efficiency that we participate in that program. At this point,
3 I've got four authorized TAI's. Those folks go to the TSA
4 training school, which is conducted by Lockheed Martin, and they
5 become a fully certified TSA instructor. So, even though it's
6 now done in our case by the private sector, it's also done in
7 federal airports by federal trainers. All have that same
8 acronym of a TAI.

9 Q Is there any difference in the training your employees
10 receive as compared to the TSA employees?

11 A The training is conducted by my certified instructors. The
12 curriculum is a TSA provided curriculum and we do not have the
13 authority or the authorization to deviate from that curriculum.
14 Once we -- the TSA -- I guess I should also say that, not only
15 deviate, but that the TSA local training manager sits in on
16 those classes to audit them for consistency and, in fact, the
17 actual testing and evaluation that the screeners go through
18 periodically during the classroom portion and at the end of
19 their on the job training portion is conducted and certified by
20 the TSA, not by Firstline.

21 Q Okay. After this initial training is completed and they're
22 successful, I assume a job offer is made. Is that correct?

23 A No. That's incorrect.

24 Q Okay.

25 A The job offer is made prior to -- when I talked about the

1 orientation, they are, in fact, full-time employees. If they
2 wash out of the program, for some reason they fail to meet one of
3 the TSA windows, then they're terminated, but they are, in fact,
4 employees at that time.

5 Q I'm sorry. After they've completed training, what's the
6 next step in the process?

7 A They become certified by the TSA to conduct the screening
8 function and they go out into the checkpoint as fully certified
9 screeners.

10 Q Okay. Can you describe the operational screening
11 responsibilities, the duties of the TSA and Firstline? How do
12 they interrelate?

13 A Yeah. I guess I would say that Firstline, if I can get
14 some semblance of order, Firstline conducts the assessment
15 process, as I described, in conjunction with the TSA and
16 following TSA very strict guidelines. So we recruit, we assess,
17 and we train, as we just described, those folks, once again, in
18 accordance with the TSA curriculum and guidelines, TSA testing
19 and evaluation, and then we what I call equip the organization.
20 That is, we provide them with a screener uniform and
21 accoutrements and then we sustain them, if you will, over time.
22 That is, insure that they're paid, all of their human resources
23 functions are taken care of, et cetera, and we provide that
24 workforce to the TSA. Specifically, to the
25 federal security director here in Kansas City and his staff.

1 The federal security director's staff in Kansas City, albeit
2 maybe slightly modified by signs of the airport, is identical to
3 the federal security staff at any of the other airports, federal
4 airport -- well, they're all federal -- and any other airports
5 in the United States. That is, the federal security director
6 has an assistant federal security director, AFSD, for screening.
7 In our case, it's a she and she, in turn, has a deputy assistant
8 federal security director for screening who is in charge of the
9 day-to-day operation of the screening function, I should say, at
10 the airport. So we provide the screeners with the constraints
11 that I discussed or the issues that I discussed and the TSA then
12 takes them and runs them, if you will, day to day to day for the
13 screening operation in the airport. The TSA function under the
14 assistant or the deputy assistant federal security director for
15 screening. They have a group of screening managers. In our
16 particular case, there's one per terminal and those ladies and
17 gentleman are the folks that are in charge of supervising and
18 oversight of screening operations in the airport. In essence,
19 Firstline has no authority at all in the conduct or operation of
20 the screening operation itself. In the broadest sense, I guess
21 you could say that we're a personnel company that provides the
22 resources to the federal government.

23 Q Okay. how are disciplinary issues handed?

24 A I don't know the technical legal term, but the TSA is very
25 concerned that they don't get into a joint employment issue and,

1 HEARING OFFICER COFFMAN: Okay. Could I ask quickly, just
2 to make it clear, that the Firstline employees that are duty
3 managers that they would be excluded from the unit as 2(11)
4 supervisors and, as such, have the authority to hire, fire,
5 discipline, or effectively recommend?

6 MR. HEINEN: The Petitioner would agree.

7 HEARING OFFICER COFFMAN: All right. And Employer?

8 MR. TRUMPETER: Yes.

9 HEARING OFFICER COFFMAN: Okay.

10 THE WITNESS: And that's stated, I think, in the
11 stipulation.

12 HEARING OFFICER COFFMAN: Okay. So that stipulation is
13 then received into the record.

14 Sorry for interrupting you. You can go ahead.

15 MR. TRUMPETER: Okay.

16 Q BY MR. TRUMPETER: How is pay set?

17 A I'm sorry. I did not hear the question.

18 Q How is pay set for your employees?

19 A We have a -- we brought along a copy of our contract, but
20 pay is determined by the TSA. Let me clarify that a bit for
21 you. The TSA comes to Firstline or the other private companies,
22 for that matter, and will tell us what the average loaded wage
23 rate is for a Transportation Security screener. They do the
24 same for the supervisors.

25 Q What do you mean a loaded wage rate?

1 A A loaded wage rate is a combination of pay and benefits.
2 So, just as an example, if they say the loaded wage rate is
3 \$20.00 an hour or \$15.00 an hour, it's up to -- Firstline has
4 the discretion to put all of it in benefits -- obviously, that's
5 not the case -- all of it in wages, or some combination thereof.
6 The TSA comes to us periodically -- that may be annually -- at
7 any period of time. Last year, it was a couple of times during
8 the year and said that their analysis says for this locality,
9 the Kansas City locality, that there needs to be a X per cent
10 increase in the next pay period and that we are to submit to
11 them by a certain date what our package is going to be for their
12 approval. So, in essence, the TSA tells us when and what
13 percentage we will have a raise, if you will, and then we
14 provide -- we have the flexibility to determine inside of that
15 wage rate how it's packaged, but then we have to submit it to the
16 TSA for approval and so that approval comes back and, if we are
17 above -- my example, \$20.00 an hour -- the TSA for a lot of
18 budgetary constraints will come back and say you've got to re-
19 visit it, \$20.00 is \$20.00. And annually -- let me just kind of
20 take it one step further if I could -- our annual raises are
21 also determined similarly. We are online -- not literally on a
22 computer sense -- but we are online with the TSA and, normally,
23 it's the January timeframe, the TSA will come out, as they did
24 this year, and they'll say that the Kansas City raise is X per
25 cent this year and the locality is X per cent and, in fact, this

1 many of those requirements outlined in that agreement?

2 A Yes. In fact, all of the items that we've previously
3 discussed, there are many, if not direct lifts, at least,
4 paraphrased lifts right out of ATSA and the whole summation of
5 the 200 pages is that Firstline has administrative
6 responsibility to provide screeners to the TSA and that TSA, in
7 fact, operates those screening locations.

8 Q Aside from the patch on the arms of your screeners who are
9 employed as Firstline employees, is there any difference between
10 those employees and the TSA employees as far as functionality in
11 the screening process?

12 A No. And I was going to say, in fact, there has been some
13 discussion that we would change over the patches and have the
14 TSA shirts, but there is no functionality difference between a
15 Firstline screener and a TSA federal screener.

16 Q Okay. As far as providing services protecting the national
17 security, is there any difference between your employees and TSA
18 employees?

19 A No. There is absolutely none.

20 MR. TRUMPETER: Mr. Schuster would like to ask some
21 questions. I'll turn it over to him at this point.

22 HEARING OFFICER COFFMAN: All right.

23 **DIRECT EXAMINATION**

24 Q BY MR. SCHUSTER: Mr. Olson, in Kansas City, does Firstline
25 perform passenger screening manager functions at the Kansas City

1 A It's the Transportation Security Administration's standard
2 operating procedure.

3 Q With respect to the equipment that you just identified, and
4 if I can walk through it, the walk- through metal detector, the
5 X-ray machine, the hand held medical -- excuse me -- metal
6 detect or, and the ETD explosive trace device, who owns all of
7 that equipment?

8 A That's all government furnished property. It's government
9 equipment.

10 Q By the federal government?

11 A I'm sorry, yes. It's federal government's. It's provided
12 by the Transportation Security Administration.

13 Q And are there any maintenance requirements in association
14 with the operation of that equipment?

15 A Obviously, there's day-to-day preventative maintenance and
16 then, obviously, routine maintenance and unscheduled
17 maintenance.

18 Q And who would do the preventative day-to-day maintenance?

19 A I have three TSA trained third party contractors, Seimens
20 trained folks, that do the preventive maintenance on the
21 equipment.

22 Q And who would do anything with respect to major repair,
23 maintenance, or replacement?

24 A The Transportation Security Administration does all of
25 that.

1 HEARING OFFICER COFFMAN: Employer?

2 MR. TRUMPETER: No objection.

3 HEARING OFFICER COFFMAN: Okay. Petitioner Exhibit 6 is
4 received into the record and administrative notice is given.
5 **(Petitioner Exhibit 6 marked for identification and received**
6 **into evidence)**

7 MR. HEINEN: I have no further questions.

8 HEARING OFFICER COFFMAN: All right. Does the Employer
9 have any redirect?

10 MR. TRUMPETER: Yes. If I could, please.

11 **REDIRECT EXAMINATION**

12 Q BY MR. TRUMPETER: Mr. Olson, I think you testified earlier
13 that there are two sections of the ATSA, A-T-S-A. One deals
14 with pilot programs. The other deals with the OPDOT program?
15 Is that correct?

16 A Yes. It's now called the Screening Partnership Program,
17 but that is correct.

18 Q Your organization is one of the pilot projects?

19 A That is correct.

20 Q It was established when ATSA was established?

21 A That is also correct.

22 Q And you're one of the five operations -- your operations is
23 at one of the five airports that has opted -- or, excuse me --
24 that has private screeners instead of TSA screeners performing
25 the security functions, is that correct?

1 A That's basically part of ATSA, yes.

2 Q And are the Firstline security s\screeners and lead
3 security screeners individuals who carry out the security
4 screening function required under Section 44901?

5 A Indeed, they are.

6 MR. SCHUSTER: No further questions. Thank you.

7 HEARING OFFICER COFFMAN: Any recross?

8 MR. HEINEN: I have no recross.

9 HEARING OFFICER COFFMAN: All right. With regard to the
10 Section 10 of the CFR --

11 MR. HEINEN: Thank you for obtaining it. I ask the Board
12 to take administrative notice of 10 CFR, Part 73.

13 **(Petitioner Exhibit 7 marked for identification)**

14 MR. SCHUSTER: Where'd you get that at?

15 MR. HEINEN: On the Internet?

16 MR. SCHUSTER: The library across the street?

17 MR. HEINEN: Quick break.

18 MR. TRUMPETER: Will that be 7?

19 HEARING OFFICER COFFMAN: Petitioner Exhibit 7.

20 MR. TRUMPETER: Thank you.

21 HEARING OFFICER COFFMAN: Does the Employer have any
22 objection to the receipt of 10 CFR, Part 73, Appendix B?

23 MR. SCHUSTER: No.

24 MR. TRUMPETER: No.

25 HEARING OFFICER COFFMAN: Okay. Petitioner Exhibit 7 is



United States Department of Transportation
TRANSPORTATION SECURITY ADMINISTRATION

400 Seventh Street, S.W.
Washington, D.C. 20590

TRANSPORTATION SECURITY ADMINISTRATION

SUBJECT: Determination Regarding Collective Bargaining – TSA Security Screeners

By virtue of the authority vested in the Under Secretary of Transportation for Security in Section 111(d) of the Aviation and Transportation Security Act, Pub. Law No. 107-71, 49 U.S.C. § 44935 Note (2001), I hereby determine that individuals carrying out the security screening function under section 44901 of Title 49, United States Code, in light of their critical national security responsibilities, shall not, as a term or condition of their employment, be entitled to engage in collective bargaining or be represented for the purpose of engaging in such bargaining by any representative or organization.

J.M. Loy, ADM.

Under Secretary of Transportation for Security
January 8, 2003

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2 of 2 DOCUMENTS

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FDCH Political Transcripts

July 28, 2005 Thursday

TYPE: COMMITTEE HEARING

LENGTH: 25764 words

COMMITTEE: ECONOMIC SECURITY, INFRASTRUCTURE PROTECTION, AND CYBERSECURITY
SUBCOMMITTEE

SUBCOMMITTEE: HOUSE HOMELAND SECURITY COMMITTEE

HEADLINE: U.S. REPRESENTATIVE DAN LUNGREN (R-CA) HOLDS HEARING ON AVIATION
SCREENING WORKFORCE

SPEAKER:

U.S. REPRESENTATIVE DAN LUNGREN (R-CA), CHAIRMAN

LOCATION: WASHINGTON, D.C.

WITNESSES:

THOMAS BLANK, TRANSPORTATION SECURITY ADMINISTRATION
MARK BREWER, RHODE ISLAND AIRPORT CORPORATION
WILLIAM DECOTA, NEW YORK-NEW JERSEY PORT AUTHORITY
ROBERT POOLE, REASON FOUNDATION
JAMES BENNETT, METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
JOHN MARTIN, SAN FRANCISCO AIRPORT
JOHN DEMELL, FIRSTLINE TRANSPORTATION SECURITY, INC.

BODY:

HOUSE SELECT COMMITTEE ON HOMELAND SECURITY: SUBCOMMITTEE ON
ECONOMIC SECURITY, INFRASTRUCTURE PROTECTION AND CYBERSECURITY
HOLDS A HEARING ON AVIATION SCREENING WORKFORCE

JULY 28, 2005

SPEAKERS:

U.S. REPRESENTATIVE DANIEL LUNGREN (R-CA)
CHAIRMAN
U.S. REPRESENTATIVE DON YOUNG (R-AK)
U.S. REPRESENTATIVE LAMAR SMITH (R-TX)
U.S. REPRESENTATIVE JOHN LINDER (R-GA)
U.S. REPRESENTATIVE MARK SOUDER (R-IN)
U.S. REPRESENTATIVE TOM DAVIS (R-VA)
U.S. REPRESENTATIVE MIKE ROGERS (R-AL)

U.S. REPRESENTATIVE STEVE PEARCE (R-NM)
U.S. REPRESENTATIVE KATHERINE HARRIS (R-FL)
U.S. REPRESENTATIVE BOBBY JINDAL (R-LA)
U.S. REPRESENTATIVE CHRISTOPHER COX (R-CA)
EX OFFICIO

U.S. REPRESENTATIVE LORETTA SANCHEZ (D-CA)
RANKING MEMBER
U.S. REPRESENTATIVE EDWARD MARKEY (D-MA)
U.S. REPRESENTATIVE NORM DICKS (D-WA)
U.S. REPRESENTATIVE PETER DEFAZIO (D-OR)
U.S. REPRESENTATIVE ZOE LOFGREN (D-CA)
U.S. REPRESENTATIVE SHEILA JACKSON LEE (D-TX)
U.S. REPRESENTATIVE BILL PASCRELL, JR. (D-NJ)
U.S. REPRESENTATIVE JAMES R. LANGEVIN (D-RI)
U.S. REPRESENTATIVE BENNIE G. THOMPSON (D-MS)
EX OFFICIO

*

LUNGREN: The Committee on Homeland Security, Subcommittee on Economic Security, Infrastructure Protection And Cybersecurity will come to order.

The subcommittee today is meeting to hear testimony on improving the management of aviation screening workforce.

I'd like to welcome everybody to today's hearing.

When Congress directed TSA to take over responsibility for airline security screening, we sought a system that would produce better trained screeners, thus increasing security.

Directly following the terrorist attacks of September 11th, Transportation Secretary Norm Mineta set forth a goal of processing passengers within 10 minutes or less. Yet by all accounts TSA has not met this goal.

Instead, according to the DHS inspector general, we have a multibillion dollar enterprise that inefficiently targets and burdens children and the elderly.

I might add, on the positive side, that TSA has recently changed its standard operating procedures effective July 14th to allow TSA supervisors at screening checkpoints the decision-making capability and authority to waive secondary screenings on passengers that are clearly under the age of 12.

I appreciate that particular change. I'm glad it is coming.

And while I applaud TSA for this step forward, it is indicative of the overall problem that we ever had such a contrary position or policy in the first place and that it took so long and so many bad stories and hearings to force such common-sense action. There is, obviously, always room for more improvement.

TSA screening operations have been plagued by high attrition rates, high injury rates, high absenteeism, screener shortages and other problems that are indicative of a problematic structure.

Furthermore, the role of security director at airports is extremely important. This individual must be able to handle crowds in such a way that manages the length of security lines. He or she needs to understand when flights are departing and when travelers are arriving in order to open an efficient number of screening lanes at different points throughout the day.

And so it begs the question: Can the federal government itself effectively run screening operations at 440 airports of different sizes across the country from its location in Washington, D.C.?

Some believe the answer is no.

As I see it, TSA problems may be rooted in a rigid centralized control which gives less weight than it should to airport diversity and shows a lack of initiative.

TSA often has little firsthand knowledge of local airport conditions, job markets and other market anomalies. The result, I fear, leaves airports short of screeners and passengers stuck in long lines.

TSA would be better served shifting workforce decision-making to the local level and providing flexibility and incentives to improve operations while focusing on setting overall training and performance standards at the national level.

I might just add that I have been informed that there is a dispute between the House and the Senate conferees in the appropriations realm as to what the proper level of screeners should be; even a suggestion on the Senate side that there ought to be a cut in the overall number of screeners.

It just goes to show, as far as I'm concerned, that we ought to be a little more original in our thinking and a little more flexible in how we try and solve this problem.

LUNGREN: I'm also concerned that TSA's unfairly disadvantaged airports that wish to use federal contractors to provide screening by not putting an end to the liability question.

The simple act of opting out of the use of federal employees to provide screening functions should not leave airports open to massive new financial and legal liabilities, particularly since the contract screeners will be working under direct TSA supervision and in compliance with all TSA security directives and regulations.

I would urge the TSA to work with the department to expedite the decision-making process and addressing this and other questions that seem to be hampering the development of viable options to the current TSA model.

I'd like to thank our witnesses for taking the time to join us today. I look forward to hearing each of your perspectives on this issue.

And now I would recognize the ranking member of the full committee, Mr. Thompson, for whatever comments he may make.

THOMPSON: Thank you very much, Mr. Chairman and members of the committee. I look forward to the testimony of both our panels today on what I consider a very important subject.

This September, it will be four years since terrorists turned passenger planes into lethal weapons, causing mass casualties and enormous destruction.

In the weeks and months after the attack, it appeared as though commercial aviation might be a victim of this heinous attacks. In 2001 alone, the U.S. commercial aviation industry reported losses of over \$6 billion. Between 2001 and 2003, it incurred losses of \$21 billion and laid off about 150,000 employees.

A fear of another 9/11 attack caused the public to avoid air travel. Americans lacked confidence that low-paid, poorly trained screeners that turned over at a rate of 100 percent to 400 percent annually, would be able to protect them from another attack.

The creation of a federalized screener force was one of the key actions Congress took to signal the Americans that it was safe to fly again.

Unfortunately, TSA in many instances has not fulfilled its part of the bargain.

TSA has struggled to identify the right number of screeners necessary to get passengers through the checkpoints efficiently and effectively. Just this week, they shifted screeners away from airports that consistently have long wait lines.

Since 2003, TSA has said that 45,000 is the right number of screeners. That's hard to believe, especially with the prospect of record-breaking travel this summer in excess of 200 million people.

THOMPSON: Screeners deserve a lot of credit. They have, at times, a tedious job. But they must stay sharp and vigilant, especially given the limitations of the technology currently found at checkpoints.

The department's inspector general has concluded that performance of aviation screeners stands little chance of significantly improving without better technology. Yet this administration has chosen not to fund any new letters of intent for fiscal year 2006 to help airports acquire better screening equipment.

We know that there is better technology out there. But this administration, too, does not fund it.

This places an even greater strain on screeners by forcing them to continue to work with inefficient equipment and engage in labor-intensive searches. All of us have had to go through the labor-intensive searches.

This just defies logic.

TSA may not be managing its affairs as well as it could, but I cannot see how putting the responsibility of screening passengers and baggage in the hands of private firms will make us any more secure.

There's nothing in any screener's audit that has been issued to date to convince me that private screeners are any better at identifying weapons and would-be attackers than federal screeners.

Congress has done a great deal to restore confidence and enhance security in our aviation sector. Wide-scale privatization of screening would be counterproductive.

Thank you, Mr. Chairman. And I look forward to the testimony of the witnesses.

LUNGREN: I thank the gentleman for his comments. Other members of the committee are reminded that opening statements may be submitted for the record.

We're pleased to have two distinguished panels of witnesses before us today on this important topic. Let me just remind the witnesses, because of the number of witnesses we have, that we would ask you to keep your oral testimony to no more than five minutes. Your entire written statements will appear in the record.

We will also allow each panel to testify before questioning any of the witnesses.

The chair calls for the first panel and recognizes Mr. James Bennett, the president and chief executive officer of the Metropolitan Washington Airports Authority, to testify on behalf of the Airports Council, International North America and the American Association of Airport Executives.

BENNETT: Thank you, Mr. Chairman.

BENNETT: I appreciate the opportunity to discuss the views of the airport community on improving management of the aviation screening workforce on behalf of the Airports Council International, North America, the American Association of Airport Executives, and our joint legislative organization, the Airport Legislative Alliance.

In addition to being an active member of those groups, I serve as the president and CEO of the Metropolitan Washington Airports Authority.

Today's hearing is certainly timely, given the situation that is emerging in airports across the country as TSA struggles to make its current labor-intensive passenger and baggage screening model work in the face of growing passenger levels.

The strains are clearly beginning to show, with wait times at screening checkpoints becoming unacceptable in a number of airports, and with problems with checked baggage screeners beginning to take a toll.

As frequent travelers, the members of this subcommittee know all too well the current situation.

The problems with passenger and baggage screening today are not only a huge inconvenience for the traveling public, they represent a serious security threat as well.

Long lines in airport terminals at screening checkpoints do not equal better aviation security. To the contrary, those long lines, as past experiences prove, are inviting targets for terrorists.

The answer in the long term, as the subcommittee helped highlight in recent hearings, is the deployment of better technology. The in-line installation of explosive detection equipment in airports, for example, can dramatically improve the efficiency and effectiveness of checked baggage screening while saving the federal government literally billions of dollars in personnel costs.

With the dramatic proof of these benefits so clearly evident at the few airports that actually have in-line systems, it is unbelievable to me that the federal government hasn't invested more in updating additional airports.

With the promise of better technology for passenger and checked baggage screening some years away, steps must be taken in the short term to improve the existing situation. Along those lines, Congress must act to provide sufficient resources for screening operations, and TSA must ensure that those resources are deployed in the right way.

Additionally, TSA must do much more to move away from its highly centralized, Washington-based approach to managing screening operations and give additional authority locally to federal security directors and to airport operators to address unique local problems.

The current rigid approach to recruiting, assessing, hiring, training and retaining screeners has led to large vacancy and attrition rates at a number of airports across the country.

In contrast, there are a few locations where FSDs and local airport authorities have been given limited authority to be creative and innovative in their approach to screening. Most notably, at the five pilot program airports with private screening companies, the results have been encouraging, as my colleague from San Francisco will highlight.

BENNETT: Many of us in the airport community had hoped that the screening partnership program, also known as opt-out, would become a way of building on a positive result of the PP-5 program and provide an opportunity for encouraging better local approaches to security screening.

Unfortunately, that has not been the case, largely because of the structure of the current program. As you know, only one airport beyond the original five pilot program airports, has expressed an interest in opting out.

The airport operator has virtually no say in how screening operations will be designed at the airport under the current opt-out program. They're not allowed to decide the specific qualified screening company that will operate at the airport, and they have no role in deciding how screening will ultimately function at their facility.

The only thing that an airport gets out of participating in the current opt-out program is an enormous potential liability exposure. This is something that Congress must work to address.

In addition to addressing the liability question, Congress must consider changes to the law that would give airport operators the authority to select and enter into contracts directly with qualified screening companies to screen passengers and property at the airport; give airport operators the ability to perform passenger and baggage screening directly if they so choose; and require TSA to establish a notification process under which airports submit a detailed proposal for passenger and baggage screening.

This is not a comprehensive list, but should offer the subcommittee an idea of some of the hurdles that now exist to the program.

In closing, I note my sincere hope that the subcommittee will soon address the issues raised today and evaluate the federal government's approach to aviation security as part of a comprehensive review of the Aviation Transportation Security Act that was passed in the immediate aftermath of 9/11.

We're now four years beyond the tragic events of that day and it is clearly time to evaluate the areas where we have it right and the areas that need improvement.

With another 300 million passengers expected to be added to the already overburdened system, we simply cannot afford to continue placing Band-Aids on a fundamentally flawed system.

Thank you for the opportunity to be here today. I look forward to your questions.

LUNGREN: Thank you, Mr. Bennett, for your testimony.

The chair now recognizes Mr. John Martin, director of the San Francisco International Airport, to testify.

MARTIN: Thank you, Chairman Lungren, the full committee, Ranking Member Thompson, Ranking Member Sanchez, members of the subcommittee.

I'm John Martin, director of San Francisco International Airport, or SFO, which is the largest airport participating in the Screening Partnership Program, which I'll refer to as the SPP.

I would particularly like to thank those committee members who have visited SFO and viewed our technology-based security systems firsthand. And I welcome other members and staff to do the same.

SFO has a long history of initiating state-of-the-art security systems, such as biometric access control, professional standards for airport screening personnel beyond those required by the federal government, and developing the first automated in-line baggage screening system.

The private screening workforce approach has worked well at SFO, and we have submitted an application to continue in the SPP. However, we can only continue upon satisfaction of four items essential to the potential liability exposure issues at our airport. These liability concerns are shared across the industry, and I believe that if the liability issues are fully addressed, more airports will consider opting out.

Of the four conditions we presented to the TSA in the letter of April 28th, two of the conditions will require amendments to the Safety Act, and two can be addressed by administrative changes on the part of TSA.

SFO's conditional SPP application would require the following four conditions be fully met for implementation of SPP at SFO.

One, any contracted screening provider chosen by the TSA be both designated as a qualified anti-terrorism technology organization and certified as an approved product.

Two, liability limitations equivalent to those extended to designated qualified anti-terrorism technology organizations under the Safety Act must be extended to SFO itself so that we are shielded from liability exposure in excess of airports that choose not to opt out.

And these first two items are probably best addressed through an amendment to the Safety Act.

Number three, TSA's contract with a screening provider must require that SFO be indemnified by the contractor.

And, four, TSA's contract with a screening provider must require the company list SFO as an additional insured.

With respect to these two items, we believe that these are relatively simple for the TSA to address. And the SFO contracts involving the FAA at our airport provide a useful model.

MARTIN: We require our contractors to both indemnify the FAA and list the FAA as an additional insured. The contractors accept this practice and there is no additional cost to the airport or the contractors.

San Francisco asked to be a participant in the pilot screening program prior to the federalization of the nation's airport screeners under the TSA, because we had serious concerns about a new agency's ability to support the difficult and challenging process of recruiting, hiring and managing one of the largest and most important workforces at our airport.

Significant staff shortfalls over a long period of time with other federal agencies at SFO had been commonplace in the past.

Our private screening company, Covenant Aviation Security, is doing an excellent job and they have successfully deployed creative hiring and training programs, minimizing employee turnover and lost time.

There's a high level of customer satisfaction, and San Francisco enjoys the shortest average passenger screening time of any of the major airports in the United States.

The combination of collaborative efforts, best practices and the application of technology has resulted in a net reduction of 400 screeners at SFO since the TSA took over in 2002. And we've seen about a 20 percent increase in passengers during that time period.

An example of a team SFO initiative that has resulted in higher efficiency is the development of a screener control center that in conjunction with our closed-circuit television program is able to monitor this operation of SFO's 39 passenger checkpoint lines and the queuing of passengers to checkpoints from a central location.

This allows the Covenant staff to redeploy staff based on the length of the lines, the various checkpoints and overall minimize staffing.

In conclusion, SFO can only continue in the airport screening privatization program if its core liability concerns are fully resolved both by congressional action to amend the Safety Act and through TSA cooperation in addressing the administrative issues.

Thank you.

LUNGREN: Thank you very much, Mr. Martin, for your testimony.

The chair would now recognize Mr. William DeCota, the director of aviation for the New York/New Jersey Port Authority, to testify.

DECOTA: Thank you, Chairman Lungren, Congresswoman Sanchez, Ranking Member Thompson, Congressman Pascrell and Congressman DeFazio.

I am William DeCota, director of aviation for the Port of Authority of New York/New Jersey. On behalf of the port authority, I'm very pleased to be here to give you our thoughts regarding the management of the aviation screener workforce.

In my role, I run one of the largest airport systems in the world.

DECOTA: There are four airports in my system that are critical to trade, travel, commerce and tourism in our region, as well as they are global gateways to this country: John F. Kennedy International Airport, which is a major domestic and international hub; Newark International Airport, a premier business airport; LaGuardia Airport; and a very vital corporate and general aviation reliever, Teterboro Airport; as well as the Downtown Heliport.

Together, they have been used by 94 million passengers, about 3 million tons of cargo and about 1.3 million aircraft movements. And we're right now experiencing a very unprecedented number of customers, and we expect to serve over 100 million customers this year.

And that activity does produce tremendous economic activity and a lot of jobs.

We have entered into a very close partnership with the TSA and cultivate and sustain those good relationships with the TSA. At Newark Liberty, as well as our other airports, we hold weekly conference calls, biweekly inspections, organized tabletop sessions to solve problems, cross-train staff; and all of that is an effort to improve communication, coordination and also to enhance the screening process.

Of course, to be successful, we need committed backers such as you in Congress and the administration providing oversight, helping us to remain flexible and being able to support the endeavor financially and with material and human resources.

We recognize the TSA had a very difficult job in forming itself and very quickly assembling what it did assemble after September 11th, 2001. The passage of ATSA certainly gave a lot of direction in that regard, and aviation screening has certainly become much more focused.

To highlight that point, we are very pleased that the TSA workforce at Newark Liberty International Airport, as an example, recently performed exceptionally well in tests of checkpoint and bomb detection machine procedures.

More than 97 percent of the 1,234 screeners passed the test, giving Newark a pass rate that makes it amongst the highest of the top 30 airports in the country.

Ideally, we would like to measure screening performance in terms of an objective set of performance measures. We like well-defined objectives for each component of the screening process. We like to receive regular feedback. We like measures such as contraband intercepted, average wait times, maximum wait times, staff courtesy and measures such as that.

Screeners are certainly the front line in the battle. We're very concerned that, when our passenger traffic is growing as quickly as I described and there is more cargo coming into our airports that recent TSA staffing strategies to address the 45,000-screener cap may make us lose a significant number of screeners at Kennedy and Newark airports.

LaGuardia may experience a modest increase but, under the redeployment plan, we're concerned that any resources that we have that are reduced will make our screening less effective.

We're also worried about diversions of our screeners to the Downtown Heliport and the Teterboro Airport, where we have regularly scheduled helicopter flights that are about to be inaugurated.

If proposed anything less than 45,000 personnel or anything that fails to provide for inflations in labor costs will, in effect, result in fewer screeners. We really can't divert our front-line screener force to other duties. Some are being diverted to administrative duties. And, frankly, we believe that the GAO's May 2005 study, which recommended a number of training, management and supervision recommendations, need to be implemented.

We're monitoring and testing our airport experience under the screening partnership program, the opt-out program. The two approaches, one where the airport becomes the screening contractor, and the second where private screening companies selected and managed by the TSA may not work the way we would like it to work.

So some airports could elect to serve as a direct screening contractor. Others, such as large hubs, may feel it would be an impractical managerial and administrative burden.

Regard to the second approach, some airport operators may see no significant advantage to their airports at this time in an arrangement where the TSA selects and manages a qualified contract screening company.

So we are basically concerned -- and we're also concerned with the liability and political liabilities that come along with it.

We know that screeners can't do it alone. The TSA has enormous physical and capacity challenges, particularly in older airports such as mine, where there's 17 terminals. Those terminals need to be expanded. We and the airlines, and certainly the financially beleaguered industry, are not prepared to take on those kinds of costs.

And we need to see more in-line baggage systems supplied at our airport terminals. There are tremendous savings in personnel costs that can result from that.

DECOTA: We need funding for passenger and baggage screening modifications. Heretofore, we have not gotten letters in intent for in-line explosive detection systems. As this committee knows, only 10 of the 430 commercial air service airports in the country have EDS systems in-line, and only nine letters of intent have been issued.

And funding is not the only problem. We recognize that it's costly, sometimes impossible, to expand facilities. And if the port authority wishes to really pioneer things such as remote baggage check in, we think with our new initiative in New York City, with the Farley-Moynihan Post Office that is going to become a train station that'll be the nexus for our airport train systems that go to our facilities, that there's an opportunity for that.

We strongly support implementation of the inspector general's findings calling for greater deployment of technology. We believe the latest technologies need to be implemented.

We have a number of things in our testimony where we talk about CT-X (ph), the CT-80 (ph) machines, backscatter radar and a variety of other things that we think are important. Some of those involve privacy concerns that must be implemented.

We are very committed to being a test bed. We have been a test bed in the past. We have a number of pilots under way that I think will be instructive to this committee in terms of leading the way.

And we are very much supportive of risk-based approaches to try and allocate resources. We do that ourselves. We follow a Department of Defense approach to allocating resources. We're spending hundreds of millions of dollars in our terminals to do that.

And we believe that Secretary Chertoff's approach to try and allocate limited resources in that direction make a great deal of sense. And so we applaud those efforts.

I would like to thank the committee for this opportunity to testify. And we look forward to working with you in the future to trying to address the many issues that you're wrestling with now.

Thank you.

LUNGREN: Thank you, Mr. DeCota, for your testimony.

The chair would now recognize Mr. Mark Brewer, the president- chief executive officer of the Rhode Island Airport Corporation, to testify.

BREWER: Thank you, Mr. Chairman.

Good morning, Mr. Chairman and members of the committee. I come before you today appreciative of the opportunity to discuss ways of improving management of the aviation screening workforce.

Again, my name is Mark Brewer. I'm the president and CEO of the Rhode Island Airport Corporation, which is a quasi-governmental entity which operates a six-airport system in Rhode Island, including TF Green, also known as Providence, a medium hub air carrier airport which serves nearly 6 million passengers per year.

Today I'd like to address three issues: improving the management of the workforce, technology enhancements and the so-called opt-out program.

First, improving the management of the workforce system. As TSA has transitioned from undersecretary to undersecretary, the priorities, personnel and indeed the organizational structure of TSA have changed. It has become, frankly, an industry joke about the revolving door at TSA.

Let me be clear: TSA has a massive job to undertake and I recognize and appreciate the depth and breadth of their role in all of our lives, but especially as an airport administrator. Yet TSA does not delegate authority for maintaining staffing levels at each airport to local federal security director, the FSD. In Providence, there are vacancies which remain unfilled until TSA headquarters gives authority to fill them.

To meet the current staffing needs, our FSD is required to, quote, "do the dance," as he calls it, by moving personnel between the checkpoint equipment and the lobby-installed EDS equipment. Shifting cross-trained personnel between various pieces of equipment and mandatory overtime -- and let me repeat, mandatory overtime -- is the only way that he can make it work.

The TSA has only signed nine letters of intent for funding integrated EDS systems at approximately 400 air carrier airports with security programs. Providence was recently informed that we are number 89 on the top list of 100 airports to receive LOI monies.

Based on the current allocation of funds from Congress, we would have to wait decades for funding from TSA for an integrated system. There is no doubt in my mind that providing an integrated EDS system is a federal responsibility.

BREWER: It's not an airport responsibility. It's not an airline responsibility. It's a federal responsibility.

Congress needs to step up to the plate in a big way to provide this funding or find creative alternative funding sources for the system. It will take a large infusion of funds -- in the billions -- to get this accomplished. And I encourage this committee to play a leading role in a congressional commitment to fund integrated EDS systems more aggressively than in recent years.

While I'm speaking of technology enhancements, I'm appreciative of TSA's efforts to look into new technology. However, the process to evaluate and install these technologies is painstakingly slow.

But more to the point of this hearing, it is essential that Congress understand that TSA's introduction of security technology is the only way to reduce manpower requirements.

If, in fact, Congress concurs that the TSA goal is to offer world-class security along with world-class customer service, then it can only do so with a heavy reliance on technology.

Not to replace personnel with technology will create longer lines and thus additional terrorist targets in all of our terminal buildings.

Regarding the opt-out program, while I have no objection to the creation of an opt-out program for those airports that feel they would gain some benefit, I personally see no advantage based on the current structure of the program. The liability issues are enormous; not one that I could recommend to our board of directors that we accept.

Knowing that TSA selects the screening companies, provides the airport no flexibility on utilization of staff, and offers no control over the operational issues provides me no incentive to consider this as a viable option.

TSA employees currently performing these important government regulated functions in Providence have passed the recertification test at 100 percent proficiency for the past three years in a row.

It is difficult for me to argue that security will be enhanced by utilizing private employees merely because their paycheck is signed by a private firm versus the U.S. government.

In conclusion, Mr. Chairman, my points are these.

The TSA should empower the local FSDs to maintain their authorized staffing level. This step alone will enable those on the front lines to be more efficient and ensure a higher level of customer service.

Further, the staffing levels at each airports need to be realistic. As one airport grows and requires additional screener staffing, it should not mean that another airport loses staff only to remain compliant with some arbitrary national cap.

Two, if the goal is to reduce manpower requirements, TSA should only do so by improving technology.

Finding ways to streamline and expedite the introduction of technology into airports is key. One proven way to do this relatively quickly is to appropriately fund the integration of EDS equipment into airports.

And third and lastly, continue to explore the issues associated with the privatization, or the so-called opt-out program, to make it a viable alternative to federal employees for those airport operatives which would like to consider it.

BREWER: The liability risks and lack of operational controls make it highly unlikely the interest will be there for many airport operators under the current structure of the program.

Again, Mr. Chairman, thank you for the opportunity to express my views to the committee.

LUNGREN: Thank you, Mr. Brewer, for your testimony. The chair would now like to recognize Mr. John DeMell, president of FirstLine Transportation Security, to testify.

DEMELL: Chairman Lungren, Ranking Member Sanchez, Ranking Member Thompson and other distinguished members of the subcommittee, thank you for the opportunity to assist your important review of the airport screener program and the Screening Partnership Program.

Since November 2002, FirstLine Transportation Security and our approximately 600 dedicated employees have provided aviation screening services for the TSA and the traveling public of Kansas City International Airport under the PP-5 and now the SPP.

Under the SPP, the TSA is responsible for oversight and direction of all screening-related activities, while FirstLine manages all human resources and administrative functions at standards that meet or exceed strict TSA mandates.

FirstLine and TSA have adopted a one-team, one-mission partnership model that has created a series of improvements to the security screening process and developed new initiatives that can serve as an example for other airports.

We are proud of the many innovations and efficiencies that we have implemented, each of them facilitated by our partnership of local TSA teams.

For example, FirstLine and TSA hold joint town hall meetings, conduct joint operational and planning sessions, and share a single communication system.

In partnership with the federal security director, FirstLine staff and operations center that provides 100 percent visibility of all screening assets 100 percent of the time.

We have established an efficient zonal scheduling approach that results in essentially zero scheduling errors.

FirstLine has assumed responsibility for major portions of the assessment and hiring process in addition to becoming the first contractor responsible for new hire and ongoing security-related training. We now manage these programs in accordance with the standards that exceed the TSA's.

We also ensure that the training and evaluation of the screening workforce exceeds our contract objectives and performance metrics. All FirstLine screening staff are baggage and passenger qualified. This dual-functioning screener approach facilitates efficiency, effectiveness, flexibility and, combined with our innovative scheduling technology and operations center management, ensures that the screening staff are available both wherever and whenever they are needed.

As a result, we have one of the shortest wait times in the country. TSA's tracking and recent media analysis bear this out.

DEMELL: In addition, we collaborated with the TSA to institute a policy of temporary transitional duty assignments for our workforce, which improves operational efficiency, enhances the health of our staff, and dramatically reduces the incidence and durations of on-the-job injuries.

Our success in managing the screener workforce is reflected in the pacesetter results of the TSA's customer reaction survey and by our performance accountability metrics reviewed with TSA twice a month.

Current highlights include overtime that's tracking at 1 percent of billed costs versus a goal of 5 percent. On-the-job injuries are 1.4 percent. Only one current worker's comp case is the result of a 2005 OJI. Employee absenteeism stands at 3.58 percent versus a goal of 5 percent. And our current month-to-date attrition rate is 1.6 percent.

FirstLine's partnership with the TSA shows that the private sector has much to offer in the post-9/11 airport security model. Thus we have identified aspects of the current program that could be modified to ensure that the SPP becomes even more valuable for the federal government and the traveling public.

First, it is essential to an orderly hiring process that the SPP contractors and their local TSA partner have full control over the application, assessment and training process. For example, two-thirds of the approximately 600 applicants we've recently recruited were lost in the assessment system and never processed by the TSA's third-party contractor.

Second, liability concerns restrict the growth of the SPP program. Although FirstLine screening services have been designated as a qualified anti-terrorism technology under the Safety Act, potential airport participants seek clear assurances that the Safety Act indemnification afforded the screening contractor also applies to them and further protects the affirmative act of participating in the program.

Additionally, budget considerations remain an issue. Some airports, recognizing past unfunded mandates and concerned over federal appropriations issues, view the SPP as one area with potential for future funding reductions.

Finally, many airports seek tangible advantages from this program. FirstLine strongly supports funding mechanisms which, when properly defined, return a portion of the savings derived from the SPP to participating airports in order to help fund needed security enhancements, such as in-line EDS baggage improvements.

On behalf of FirstLine and our employees, we are committed to ensuring that our work for the traveling public at Kansas City International and our partnership with the TSA continue to enhance the security of our airline passenger system.

Thank you.

LUNGREN: Thank you, Mr. DeMell, for your testimony.

The chair now recognizes Mr. Robert Poole, director of transportation studies and founder of the Reason Foundation, to testify.

POOLE: Thank you very much, Mr. Chairman, members.

I am Robert Poole, director of transportation studies at Reason Foundation, a think tank based in Los Angeles. My background is in both aerospace and public safety, and I've been working on airport security issues since September of 2001.

My testimony today is drawn from a forthcoming Reason policy study on a new approach to airport screening. Today I'll focus on two problems that are part of that overall agenda: overcentralization and conflict of interest.

Airports really are all different, and yet TSA runs screening in a highly centralized manner that doesn't really take that into account.

First of all, the allocation of screeners is done basically once a year, but aviation is much more dynamic than that. In our research, we analyzed a database of monthly changes in passengers handled by the top 100 airports. In some months, more than half of those airports had increases or decreases greater than 15 percent.

Some extreme examples: In June 2003, Anchorage passengers increased 57 percent over the month before, in that one month. In November of that year, St. Louis passengers decreased by 47 percent, in one month.

Annual allocation of screeners guarantees shortages and surpluses at airports for much of the year.

The second example of centralization is the PP-5 program that's been discussed. What I think most people expected was that TSA would certify screening firms and let airports issue RFPs to those qualified firms, pick the best proposal to meet the needs of that particular airport, and contract with that firm.

POOLE: But instead, of course, TSA thinks it needs to elect the firm, assign it to the airport and run the contract. I think this loses most of the advantages.

And then TSA extended this model to the SPP and they seem to be surprised that airports don't see any advantage to participating. I think we've heard today why that overcentralization gets so little flexibility. And combined with the liability exposure, most airports say, "Why bother? What's in it for me?"

The second basic problem is conflict of interest. This is the problem that Congress inadvertently created when they created TSA and gave it both service provision and regulatory duty.

That's analogous, unfortunately, to the old Atomic Energy Commission whose dual role was both to promote nuclear power and to regulate nuclear power plants. It could not do both of those jobs in an objective fashion. So Congress eventually split it into the functions in the Department of Energy and the separate Nuclear Regulatory Commission.

In our forthcoming report this fall, Reason will recommend that as part of the ongoing reorganization of DHS that the TSA should be refocused on security policymaking, research and development and regulation.

The provision of all airport security companies will be devolved to each airport under this regulatory supervision of the federal security director. And each airport, therefore, would have the responsibility for deciding how to do passport screening either by hiring a TSA-certified contractor or by using their workforce under TSA approval and certification.

Now, it turns out this model is actually what is taking place at most of Europe's airports. And there's a table in my written testimony, Table 3, that shows the example of all the European airports that use this kind of an approach.

With high standards set by the central government and performance penalties built into the model, this kind of performance contracting at the decentralized level has an excellent track record in Europe and should work equally well in this country.

Now, specifically, our paper will go into a lot more details, but how would airport-centered security work?

First, as I said, each airport would have the make or buy authority, decide how to do the screening, either with a contractor or in-house. And this means the TSA would have to allow for decentralized training and hiring and so forth and that's something that would be essential to make that work.

Secondly, the funding allocations would be made at least quarterly, as opposed to annually, and would be changeable on at least a quarterly, and ideally on a monthly, basis to keep lower funds for hiring and managing people in step with the changing levels of passenger workloads at each airport.

And we recommend these be lump-sum amounts; not micromanaged exactly how you spend each dollar, but allow the flexibility to have different categories and types of people performing different duties so that screeners at smaller airports could do other security functions besides screening in off hours when they're not really needed for peak load periods.

Also devolving the funds to the airports would give the airports the incentive to invest in in-line systems.

POOLE: If they can recover their costs in a year or 15 months, it makes all the reason in the world for them to do it and they could finance the installations that way.

So this would be an alternative way to put the incentive at the airport level with the funding available to do the in-line systems.

And finally, as everyone else here has said, I believe Congress should amend the Safety Act to give airports the same degree of protection as certified screening contractors.

To sum up, I'm proposing two basic changes in airport screening, both of which I believe would require legislation: first, eliminate the TSA's conflict of interest by refocusing it on research and development, policy-making and regulation; second, fully devolve the screening responsibilities and funding to the airport level, giving airports the maximum flexibility under the full regulatory supervision of TSA's FSDs.

These changes will improve airport security by integrating all security functions under one management, free up baggage screeners to add to the workforce available for screening passengers, and save money overall.

And we'll have a lot more details when our report comes out this fall.

Thank you very much.

LUNGREN: I thank you. I thank all of you for your testimony. This is a very interesting subject and one that many members have a person interest in.

At this time, I have several questions I'd like to ask.

Mr. Bennett, Mr. Martin, Mr. DeCota, Mr. Brewer, I take it from your testimony no one objects to a continuation of an opt-out program, although you might decide whether you want to get in it or now, Mr. Brewer or Mr. DeCota. But if there were a continuation, you'd all like to see some changes, is that correct?

Mr. Martin, since you seem to be operating a fairly large airport operation that has the private screeners, in your particular circumstance, do you think that you would see a different level of service if you were not in the opt-out program right now?

MARTIN: It depends. I have great confidence in our current federal security director. I think he would do a good job if we converted to a federal workforce.

But based upon my 10 years as director and 25 years at the airport, I've seen over time the way Immigration and Customs staffs were very short in the '80s and '90s and there were periods where we had terrible lines in the Customs processing for that reason.

So there's an inherent distrust that I have of a federal agency's ability to maintain adequate staffing and, at times, the real commitment to customer service.

LUNGREN: You referred to your airport as utilizing a technology- based system. Are you suggesting that you use technology more than the other airports do?

MARTIN: I am. Before 9/11, before TSA was even in operation, we made a decision to go with a full in-line operation in our international terminal and we were proceeding with that by October of 2001. We now have a full in-line system airport-wide.

All of the images from the in-line CTX 9000s are viewed from a multiplexing room, one remote center. The images are either cleared or if they're not cleared, the bags are routed to a room to the back to be opened, where the people who are opening the bags can see an actual image of what the suspicious item is.

That system overall, this in-line system, has been the most important thing in reducing the level of staffing. And we found a pay-back period based upon that reduced staffing of about two and a half years, given the capital costs.

LUNGREN: So who paid for the capital costs?

MARTIN: TSA. And we actually used some AIT (ph) funding and then some of our own money. TSA covered about 60 percent -- TSA and FAA covered about 60 percent of the costs -- about 40 percent by the airport.

LUNGREN: But you were arguing that the labor cost savings over time paid for it?

MARTIN: Given the labor cost savings, there's about a two and a half year pay-back period. And based upon the analysis my staff has done, we think at a national level, it's probably a three- to four- year pay-back period.

LUNGREN: If you didn't have that in-line system, would you believe that your opt-out system would be that beneficial as opposed to the other government employee system?

MARTIN: We still see benefits. The level of sick time usage, of worker's comp, is much lower at our airports than nationally.

The contractor has employed baggage handlers to do the heavy lifting of bags rather than using a generic job classification. And that certainly has reduced the workers...

LUNGREN: Would you explain that a little bit?

MARTIN: Generally, I believe the TSA uses one classification of employees both to screen passengers and also to lift the bags in the areas where the CTXs are. And many of those personnel don't really have -- are not appropriate to lifting the heavy bags, resulting in a lot of worker's compensation claims.

What Covenant has done is hired a lot of former airline baggage handlers to perform the heavy lifting of the bags.

LUNGREN: Is there a different rate of pay for the ones who actually are the lifters versus the screeners?

MARTIN: I'm sorry, I don't know.

LUNGREN: But you have seen savings with respect to worker's comp.

MARTIN: Worker's comp and a lower level of sick-time usage.

And in general more creativity in the training and the hiring process than we think the TSA would have. And the contractor's been very productive in working as a team member, for instance in putting in place our security command center to monitor the lines at all the checkpoints through a camera system and then redeploying staff based on the length of the lines.

LUNGREN: Mr. DeCota, you mentioned that you have a very good relationship with TSA. I'm very pleased to hear that, and that you have a regular communications and so forth.

What about the question of flexibility? Mr. Martin has suggested that just that simple little issue of having the people who are lifting the bags different than the screeners has actually been a benefit. Is that flexibility allowed in the process that you have?

DECOTA: I have not seen the flexibility in my process, but I have not also seen that flexibility nested within what I understand the opt-out program works.

I know he's got some flexibility because he has 100 percent in-line system. At my airports, there are no in-line systems. There will be one when the new American Airlines terminal opens at the end of next month. There'll be a second after we've reconfigured Newark's Terminal B, which is a 1973 terminal. We're spending about \$300 million to modernize that terminal and in that we will undertake the expenditure for in-line on our own.

But right now, we have the same rigid categories, we have the same rigid, inflexible -- Washington, D.C. is where we get our staff from. Our FSD does not have the flexibility to do his own hiring, recruitment. The training programs are all passed down from Washington.

DECOTA: So right now, we have the issues of absenteeism particularly with training, vacation scheduling and injuries as Mr. Martin described, because it's the baggage handlers. And I don't see how any of that changes under the Screening Partnership Program.

LUNGREN: Thank you, Mr. DeCota.

The chair recognizes the ranking member of the subcommittee, Ms. Sanchez.

SANCHEZ: Thank you, Mr. Chairman.

And thank you, gentlemen, for being before us today. As you can quite imagine, many of us, especially if we live in California and work in Washington, D.C., get to go through a lot of airports. And I think I've been through all of yours, probably most of them in the last month.

And I have found, my personal experience has been, regardless of who's working, whether it's a contractor or it's the TSA, that the difference with respect to what happens at the screening area is the training of the personnel.

In other words, if I go to an airport on Monday and I have good people who are trained and understand what's going on, I get through pretty fast. If I have people who are just being trained -- there's a lot of on-the-job training going on, too, at the same time that we're going through -- you can be 20 or 30 minutes.

The other day, I think I was at SFO and my purse -- this one, to be exact -- went through and I went through and then it was stopped. And it was opened up, and it was looked at. And then it was put through the machine again. And then it was stopped, and it was opened up, and it was looked through. And then it was taken apart and put in a bin and put through again. And the third time it was put through as I sat there looking at the process, my wallet was being given away to somebody else because it happened to be in a bin beside my purse.

And, of course, I was pulled aside. So I had to, sort of, signal and tell them, "No, no, no, that stuff is mine."

And I took a good look. I also talked to a lot of the personnel as I go through. Some of them recognize me, some of them don't.

SANCHEZ: But the training, I think, is very, very vital.

So my question to you, Mr. Martin, is what do you think of the training that's going on with respect to non-TSA or contracting, sort of, people versus the training that the TSA people are getting? Do you see differences in that?

MARTIN: Well, first, I agree that training is the most important thing for all the screeners. And I do not think that there is a big difference, if any difference, between the training that is being provided for Covenant employees versus federal screeners. And I know our federal security director is very involved in that, overseeing the training program that Covenant has in place.

SANCHEZ: So does training to the individual contracting employees come from the TSA or from the same source that trains the TSA people?

MARTIN: It's provided by Covenant, but in accordance with TSA standards and monitored closely by the TSA.

SANCHEZ: I have a question for Mr. Martin again; he had some very interesting testimony.

You said that one of the differences you think you saw was recruiting, hiring and managing, which was more difficult under TSA, you thought, maybe was getting better done, there were more people being hired, faster, et cetera.

One of the problems we had when we had private companies, before we went to TSA, was that the background checks weren't being done, or they weren't being done correctly, and we had felons, we had domestic violence warrants out on some of these people, we had people, quite frankly, that weren't supposed to be in our country.

Do you think if we went to SFO today and pulled all those people who work for the contracting company and pulled them off, do you think we'd find any of this stuff in their background?

MARTIN: Those employees are all subject to the same background checks as the TSA employees.

SANCHEZ: But that's not what I asked you. I said, do you think if I pulled off your employees, the contract employees, would we find these types of things in their background?

MARTIN: I don't think we would, because all of those employees have had the background check process completed.

SANCHEZ: So the background check process completion was done by the TSA for those contractors or the contractors themselves signed to the effect that they checked their backgrounds and everything?

MARTIN: The employee information is provided to the TSA, and I believe they then work with another federal agency that runs the background check.

SANCHEZ: So are you trying to tell me that, whether you're a private company with employees or whether you're the TSA, basically your background checks and everything are being done by the same people?

MARTIN: That's right.

SANCHEZ: OK. So we're not really changing the process in that.

So the other difference you think is, what; that the people are getting hired faster by management so they go through that process? Because you said, the difficulty with TSA was that you saw recruiting, hiring and managing worse off in the TSA levels than you saw in the contractors.

Explain to me where the differences are that you saw.

MARTIN: Of course, we never had TSA employees performing the screening, but I saw that with the Customs and Immigration over time in the 1980s, the 1990s.

SANCHEZ: OK. So you didn't see a difference between TSA employees and what you've got now.

MARTIN: I haven't had that opportunity because I have only had private contract employees.

SANCHEZ: Thank you.

LUNGREN: Mr. Pearce is recognized for five minutes.

PEARCE: Thank you, Mr. Chairman.

Appreciate the testimony by each of you.

Mr. Martin, do you all track your costs in dollars per person screened? Do you have any performance measures of your own internally?

MARTIN: I don't.

I know that the federal screening director meets weekly with Covenant to monitor the performance and has very exacting standards. And I personally have seen that as one of the benefits of the program, is the federal screening director is able to spend their time on maintaining the assessments of the program and the broader security issues, rather than dealing with just the human resources issues.

PEARCE: I may have been a little bit too tight on the question. The parameters maybe not in your hands, but they exist on the part of the contractor, and then a federal employee comes in and, kind of, looks over those data.

MARTIN: They do. And those standards do exist under the TSA's guidance, and those are the factors that determine the amount of bonus, if any, that Covenant receives.

PEARCE: Do we measure wait times also?

MARTIN: Yes.

PEARCE: I have not seen those objective screening goals.

PEARCE: Mr. Poole, I think it was you who said that we've spent \$5.5 billion and basically haven't improved the capability of the public to know that they're somewhat protected from dangerous objects. Can you explain that just a little more?

POOLE: That statement was based on the recent reports this spring from the DHS inspector general and the GAO. And details were in the classified version of the reports, which I have not seen, but the broad conclusions were discussed on the floor of Congress, particularly by Chairman Mica of the Aviation Subcommittee, saying that the performance is measured by teams that come in and try to sneak prohibited items through the checkpoint. The rate of those things being successfully detected today apparently are no better than they were at the time TSA was created.

And so that means you really have to question what are we getting for the very large expenditure we've made on keeping dangerous objects off of planes.

PEARCE: So then these are not your personal observations, but those that you've gleaned from the GAO report.

POOLE: That's correct.

PEARCE: Thank you.

Mr. Martin and Mr. DeMell, you both mentioned that you have screening control centers, screening operation centers, that monitor checkpoint lines to adjust staffing levels.

First of all, are you aware that the TSA is doing that at any of the airports under their control? And is this technique just characteristic of your own operations, or do you see them among other private operations?

MARTIN: I'm not aware of other airports that have such a system in place. Our operation is staffed by both TSA and Covenant employees, and it was very much a partnership program between all three organizations.

PEARCE: Mr. DeMell?

DEMELL: In our particular case, our operations center shows the actual movement of screeners by name, by function, in real-time. It's available not only to our staff in the control center, but to our FSD in his office. He can watch in real-time people being moved from one checkpoint to another.

PEARCE: If you have a surge of passengers today that didn't exist tomorrow, how do you get people off -- how do you get them to work if you're doing this flex staffing, how do you get them in and on the floor?

DEMELL: We have a zonal staffing approach. We don't staff by checkpoint, we staff by zone.

FDCH Political Transcripts July 28, 2005 Thursday

PEARCE: But what if all of your zones get hit with a rush at once? Do you have the capability to respond?

DEMELL: We have the capability to move those people immediately.

PEARCE: Do you forecast tomorrow's flight schedules at all? Do you try to anticipate what tomorrow's load is?

DEMELL: Our schedules are done a week at a time and reviewed daily.

PEARCE: How do you determine the staffing levels a week ahead? The TSA tells me they can't do it for privacy concerns. And I said, just call up and ask if there are any seats left on the aircraft going to different towns. That'll tell you. When I call the travel agent, they can tell me, "You haven't got a prayer of getting on any plane all day long," or, "Yes, all the seats are empty tomorrow."

DEMELL: The TSA provides us with...

PEARCE: I don't want you to say anything that's going to cause you to go to jail, be careful.

DEMELL: The TSA provides us with those passenger loads, which are provided by the airlines themselves. That's the only information we have to work with, so that's what we have to deal with.

PEARCE: OK. You generally are able to adapt and keep your wait times down pretty low.

DEMELL: I think that's evident by all the studies that have been done. I think there's only one airport in the country that has lower wait times than our airport.

PEARCE: Thank you, Mr. Chairman.

LUNGREN: The gentleman, Mr. Thompson, ranking member of the full committee, is recognized for five minutes.

THOMPSON: Thank you very much. It's been interesting testimony so far, Mr. Chairman.

As I look at the title of the hearing, which is, "Improving Management of the Aviation Screening Workforce," two of -- Mr. Martin and Mr. DeMell have a relationship from a private standpoint.

THOMPSON: Mr. Martin, you talk about the baggage handlers and checkpoint screeners in this kind of situation. Do you know whether or not the rate of pay for these individuals equals or is near what TSA was paying people?

MARTIN: I do not know that. I know that either it's comparable but I don't know whether it is slightly above or slightly below. But it's very much comparable to what TSA screeners I know are getting paid in Oakland and San Jose.

Covenant also provides bonuses to employees based on performance level.

THOMPSON: Can you provide us with average payroll information you have access to on that contract so the committee can look at it and make some determination also?

MARTIN: I will do that.

THOMPSON: With respect to the Kansas City contract, is your rate of pay commensurate with what TSA was paying?

MARTIN: We are required to provide a pay scale that's equal to or exceeds that which the TSA pays. And that's the total pay package to include the benefits package.

THOMPSON: Now, that's in your contract?

MARTIN: Correct.

THOMPSON: As you know, and I know you know, you're involved in an organizing dispute with the workers there. Could you provide us why you think workers shouldn't have the right to organize?

MARTIN: The decision really isn't mine, Mr. Thompson. The edict was issued by the TSA.

And our only position is that if security is, in fact, an issue, that our airport should operate under the same auspices as any other airport in the country.

THOMPSON: Well, since you've mentioned TSA, can you provide us with that edict that TSA told you that workers could not organize?

MARTIN: They didn't just tell us, it was a public statement. But, yes, we can provide that.

THOMPSON: I would love to have that because, obviously, I think...

MARTIN: The heart of the matter.

THOMPSON: That's not correct but I'd love to see that point.

The other issue for Mr. DeCota, can you tell me whether or not TSA has provided your operation with the latest technology in screening and what have you, or are we still dealing with 2001 technology and, obviously, we are a long ways from that? Can you share on that?

DECOTA: Yes, I appreciate the question, Congressman.

I guess, given that we have 17 terminals and given that they are serving a 100 million passengers, there's quite a different patchwork of equipment that we have at each of our airports and at each of our terminals.

The equipment we have fully meets the requirements of the law to electronically screen all passengers and baggage.

DECOTA: We have early stage EDS machines. We have explosive trace detection machines, which take up a lot of room in lobbies and use card tables and swipes. And so we have that.

We have some of the newer EDS machines, such as the CTX 9000s and the new L-3 machines. We are fortunate that we have recently begun to receive some of the newer technologies, Reveal's CTX-80 (ph) machines. We just announced the other day at Newark Liberty International Airport we have now received some of the new explosive detection system portals, where people walk through the puffer machines. And so we are now going to get some of those.

So we do have some of the new equipment, but we clearly do not have new equipment like that in every single terminal that we operate. So there's a different level of screening that passengers are being subjected to depending upon where and when.

THOMPSON: Well, Mr. Brewer, can you tell me whether or not your experience with TSA and technology has been one where you had to bring the technology to TSA and say, "Look, people, we can do it a better way. We can do it cheaper than what you are suggesting"? And if so, what was your experience?

BREWER: Well, actually, thank you, Congressman.

We have worked very, very closely -- we have an excellent working relationship with TSA, both on a national basis and with the local federal security director.

We were the first airport in the nation to receive this puffer explosive detection for persons walking through the checkpoint. And we had that late last year, and that is now being deployed.

We have also been a test site for some of the biometric employee credentialing, of the first 10 in the country to be able to have a pilot program for that.

We were, as every other airport in the nation, meeting the requirement to have all bags that went in to checked luggage -- into the hold of the aircraft checked for -- explosive detection by electronic means by December of 2002. All the equipment that we have in Providence was there in 2002.

We were also one of the first airports in the country to get the new screening checkpoint X-ray machines that use the threat image projection. Those were things that the TSA had in the pipeline.

And in my testimony, my issue wasn't so much that TSA has technology out there. There's always new technology being created. My issue is that it is so painstakingly slow to get it introduced into airports.

THOMPSON: Thank you very much, Mr. Chairman.

LUNGREN: I thank the gentleman.

Mr. Pascrell is recognized for five minutes.

PASCRELL: Thank you, Mr. Chairman.

Mr. DeCota and panelists, welcome to the hearing.

I have a question for you, Mr. DeCota. TSA reports that the screeners intercepted over 3,300,000 prohibited items at security checkpoints between October of 2004 and March of 2005 at Newark airports including knives, explosives, fireworks and a lot of other assorted things.

Among the top performers, Newark Liberty International Airport was at the top of detecting these things in the entire country. It achieved a 97 percent accuracy rate with its over 1,200 screeners.

You and I both know, and have oft thought about it, that Newark Airport has had negative press, a lot of problems for a variety of reasons. So I welcome this news.

I want you to account for Newark's turnaround.

DECOTA: Thank you, Congressman.

Since we do work, as I said, very closely with the FSDs at each of our airports our understanding at Newark and I think we're seeing similarly good experiences at the other airports that we have.

But the management at TSA has really stepped up their discussions with their screeners in reinforcing standard operating procedures in terms of what needs to be done. They're also doing much more frequent evaluations of screeners in their evaluations and assessments so that they can get more rapid feedback so that its reinforced back in the minds of the screener in terms of what the expectation.

The TSA has been using screeners at Newark Liberty International Airport and our other airports that have very good performance to augment the screening workforce.

And so therefore, people are being trained by the best of their own peers. And so that's a little bit of a two-edged sword because we're taking some of the best screeners off the line to train but at the same time, the train the trainer program seems to be working very effectively, as you described.

PASCARELL: Let me ask you this question: Are you looking at different characteristics before you hire an individual to be a screener?

DECOTA: All of the hiring is done specifically by the TSA. My understanding is that they do have very, very specific characteristics the way we have characteristics for hiring people in customer service jobs. I don't know what their characteristics are that they actually...

PASCARELL: You mean you don't communicate with them as to what they're looking for in individuals? I mean, is this top secret? Is this another redacted report? How do you know what's going on if they're not telling you?

DECOTA: I would have to ask, for instance, in my case, the Newark Liberty International Airport, Susan Baer, the general manager.

DECOTA: She has the day-to-day relationship with the TSA.

I would not imagine that that would be a secret. I'm sure the type of vigilance that's required to be a TSA person, the type of traits and characteristics wouldn't be as secretive, but I just don't personally understand...

PASCARELL: Well, I'm looking at the numbers at Newark. I'm looking at the numbers from the rest of the airports around the country. I wonder if it makes sense to you, since you're here testifying, that we make a special effort, because of their qualifications, to hire former law enforcement officers, which I've been talking about for two years. What do you think about that idea?

DECOTA: Law enforcement officers certainly possess the types of traits that are required in these kinds of positions. I would assume that they could be potential candidates, even under the TSA structure.

I assume that what you're referring to specifically would be using law enforcement officers perhaps under a contract basis, not unlike, perhaps, opt-out, but, sort of, a lesser form of that. We would have no problem with that. I think that our experience with our own law enforcement officers have been extremely good.

PASCARELL: Law enforcement officers are trained not only to work with the state of the art, taking advantage of the science and technology that's available, but law enforcement officers, more importantly, are taught how and what to look for and to look in somebody's eyes. They are very, very efficient in this.

It would seem to me there's so many, because folks are retiring earlier, after being pushed out of force. That has good and bad effects. I think that we should take advantage of that.

I have one more question, if I may, Mr. Chairman.

TSA announced that the nation's 45,000 screeners would be relocated. You're going to lose 39 screeners at Newark and 162 screeners at JFK and 76 at LaGuardia.

What impact do you believe this change in the screener resources will have on the wait lines, as well as the safety, more importantly, at the airports?

DECOTA: Well, as Mr. Bennett's testimony also provides, we believe that longer wait lines are directly a safety issues, that they're very much tied to each other, that it creates a very difficult vulnerability situation.

I think the reduction is serious in terms of the kinds of impact that it's going to have on us in terms of wait lines.

PASCARELL: Have you had a good relationship with the airlines in terms of moving the lines? Are we sacrificing safety at Newark, at LaGuardia, at Kennedy because the airlines don't like these long -- nobody likes long lines. I don't know who does.

But are we sacrificing safety to move the folks along through these lines?

DECOTA: Not that I have seen, Congressman. Every passenger is subjected to the exact same types of checks that have been prescribed by the TSA.

Up until now, our wait times that exceed 40 minutes have been extremely minimal. We're really trying to enforce the 10-minute standard on the TSA, even though that's not an official TSA standard anymore.

The mistake right now that we think the TSA has made in the calculation of screeners that you describe, where I'm going to lose screeners, is that some of the assumptions as they've looked at arrival distributions, passenger and bag throughput, flight schedules and volume, also include assumptions like 65 percent load factors. We don't have any airlines that have only...

PASCARELL: And finally, do you agree or disagree with the reduction in the amount of screeners at these airports?

DECOTA: Very much disagree.

PASCARELL: Have you expressed that to TSA?

DECOTA: We have had that discussion locally. I think the next step would be to elevate that to Washington.

PASCARELL: Mr. Chairman, thank you.

LUNGREN: Happy to give the gentleman an additional question.

Mr. DeFazio is recognized for five minutes.

DEFAZIO: Thank you, Mr. Chairman.

Mr. Martin, before 9/11, I remember San Francisco had the lowest rate of screener turnover because you had something called the living wage, isn't that right? You screeners were paid much more than the other minimum wage screeners across the United States.

MARTIN: That's correct.

DEFAZIO: So you started, sort of, with that base. How do the wages now compare to the living wage that was paid before?

MARTIN: They're I think about \$4 an hour higher than the wages paid before.

DEFAZIO: OK. And you believe they're comparable to the federal wages.

MARTIN: Yes, they are comparable to the federal wages. I'm sure of that. I just don't know...

DEFAZIO: OK. How about health care, is that comparable to the federal program?

MARTIN: Health care is comparable as well.

DEFAZIO: And how about retirement?

MARTIN: I don't know about retirement.

DEFAZIO: Because I'm just wondering how the company makes a profit if they're paying the same as the federal government and the federal government isn't paying more for your security than they would pay if they were installed there as public screeners without the profit added on.

MARTIN: I can't tell you that.

DEFAZIO: Can't tell me. OK.

I'm really curious about this liability exemption. You have total confidence in Covenant and the work they're doing, is that correct?

MARTIN: I believe they are doing a good job.

DEFAZIO: OK. Then why do you want such a broad indemnification for liability?

MARTIN: The concern is that if there were ever a terrorist incident that originated at SFO, that the plaintiffs' attorneys would look at as many persons as possible to go after money and who had the deep pockets. And our concern is...

DEFAZIO: I understand that. (inaudible) Excuse me; I don't have a lot of time.

But my understanding is you want an indemnity that would apply to all claims for liability, even beyond the terrorist acts. I mean, the terrorist issue I'll get into in a minute, but you want indemnification for other actions of these contractors.

MARTIN: We do. And it's the standard we require all of our own contractors to comply with, both for services they provide to us and...

DEFAZIO: How about if they just indemnify you? Why should the federal government indemnify you for a private contractor for their negligence that isn't a terrorist act? We'll get to the terrorist act in a minute.

MARTIN: Congressman, we only want the contractor to indemnify us. And we want TSA to require the contractor to indemnify us.

DEFAZIO: OK. All right. You want the contractor to be required by TSA to indemnify you.

Well, then I would ask the gentleman from FirstLine, have you indemnified your airports?

DEMELL: We have not.

DEFAZIO: OK. Have they asked you for that?

DEMELL: They have not.

DEFAZIO: OK. Would you do that if...

DEMELL: If we received full protection under the Safety Act, we would.

DEFAZIO: Well, wait a minute. But what's your liability limit now? I understand that...

DEMELL: \$500 million.

DEFAZIO: \$500 million. So you carry a \$500 million coverage. And is that for terrorism or...

DEMELL: Terrorism.

DEFAZIO: OK. What about other actions?

DEMELL: We are insured against any other claim against the airport that would result from negligence in passenger screening, lost items, damaged items.

DEFAZIO: So in a sense, you have indemnified them, sort of, on other than terrorism?

DEMELL: Other than terrorism, we follow what is required by the TSA.

DEFAZIO: But they haven't required exactly what he's asking for here?

DEMELL: I'm not exactly sure exactly what he's asking for. So I really can't comment on that.

DEFAZIO: OK. Right.

I guess I'm still puzzled by this. You can have TSA and you wouldn't have any worry -- right? -- because it is federal government.

MARTIN: I simply don't want any liabilities for the decision to have opted-out. And I believe that it is...

DEFAZIO: But aren't there consequences for decisions? I mean, you know, you want to opt-out. You don't want to have the federal screeners. You want to push that agenda until we have a kind of mixed match system.

At some point you've got to say, "Well, gee, we going to have to go out and acquire some insurance here, because we want to have the private contractor, not the federal employee."

MARTIN: I'm prepared to do that. We would prefer to stay in the opt-out program, but we're perfectly prepared to use federal screeners and I believe with our federal security director we can make that work.

But we simply must have those protections. And they're simple to provide. We get these from our contractors all the time.

DEFAZIO: Well, they're simple to provide, except from the perspective of someone who represents federal taxpayers and what obligations we're piling on to federal taxpayers so a private company can make a profit, so you can have a private company in your airport.

Let's go beyond that.

On the issue of the technology now, you don't have -- I think we had one person say that you had the puffers at Rhode Island. Does anybody have the walk-through portals that somebody mentioned privacy concerns about, the backscatter?

(UNKNOWN): No.

DEFAZIO: Have you had those?

(UNKNOWN): No.

DEFAZIO: OK.

Who do we expect is going to provide -- say in the case of San Francisco, you don't have either of those. You don't have the puffer walk-through or the backscatter portal or the enhanced screening for the passenger checkpoints. You're still using 1970s technology.

Part of the problem I'll get to, Mr. Poole, in a second.

But who do you think is going to pay for that? The feds pay for the in-line EDS. Should the feds pay for the enhanced equipment at passenger checkpoints when you have a private contractor?

MARTIN: I believe that is a federal responsibility.

DEFAZIO: OK. So the feds pay for the equipment. We bring in the private contractor. We indemnify them. We indemnify you. They make a profit. People probably don't get quite as good pay benefits and/or insurance, otherwise it just doesn't quite all add up. So I'm just having a little problem with that.

But, Mr. Poole, you shouldn't quote things that you don't know. I've seen the classified reports.

DEFAZIO: I've been involved in this issue. I introduced a bill in 1987 to enhance checkpoint screening, because I was appalled at what I learned at the time, which has -- since well-known, they couldn't find, a large percentage of the time, a fully assembled .45 caliber handgun in encased in Lucite in a bag that could contain no more than two pieces of clothing. That was the state of the art in 1987. So I introduced my first bill back then.

And I fought this issue for years, but it was always, the airlines pay for it? They didn't care about security.

So we went all the way up to 9/11 under that sort of a circumstance, with some improvements over the years because of federal oversight and federal pressure. But, still, it was a problem.

I can tell you, without getting into classified stuff, that the tests that were conducted pre-9/11 compared to the tests post-9/11 are totally different and much more sophisticated challenges to the system.

So for Mr. Mica or anybody else to falsely equate the level of detection and security -- although it nominally may look the same, in actuality, it's very different because you're dealing with very different sorts of threat items and test protocols than you did prior to.

And if you would go further in that report, they say, "We have reached a cap in performance, we've got good people and they can't do better until they have technology that is after 1980."

And whether we got the private companies or the public screeners, they're dealing with junk that we threw out in the lobby of this building more than a decade ago because it was inadequate to meet the threats against the members of Congress and it was slow -- also, because it's like, "Sir, there's something in your bag." Can I stop the line? Can I have an extra employee standing here? Can that extra employee walk all the way back down, stick the bag in a different perspective on the line, put it through again, so I might look at it? Yes, you can certainly do that. OK, two minutes later the bag comes through again. Everybody's been held up.

That doesn't happen here because we can do it in all the dimensions at once. And so we need new technology.

And I would hope that your group would focus on those sorts of things, too, because you can have the best screeners in the world, whether they're private or public, and if they're working with junk, they can't find the threat, they're not going to find the threat, plain and simple.

Thank you, Mr. Chairman.

POOLE: Appreciate the corrections, and thank you very much.

LUNGREN: The gentleman's time is expired.

Mr. Langevin, recognized for five minutes.

LANGEVIN: Thank you, Mr. Chairman.

I'd like to thank all of our witnesses for being here today.

I especially want to thank and welcome Mark Brewer, president and CEO of the Rhode Island Airport Corporation, who is here to represent TF Green Airport, which is actually located in my district.

I think Mark's a great addition to this hearing, and I just wanted to let my colleagues know what a tremendous job he and his team are doing in Rhode Island.

I have to say, I travel in and out of many airports, as we all do, and I have to say that the TSA workforce at TF Green is one of the best that I've ever encountered. And I know that they're understaffed and operating at less-than-perfect circumstances but they still manage to perform their job seriously and thoroughly while at the same time providing excellent customer service.

I know Mark takes a lot of credit for that, and just wanted to thank you for all of your efforts and for lending your expertise to us here today.

I'll start, if I could, with a question for you, and ask you, how do you think TF Green will be impacted by the recently announced reallocation of screeners, which will leave you with 32 fewer full time equivalent positions? I wanted to know, do you think that wait times will increase, or security is going to be compromised because of these reductions?

And I know that the FSDs are already involved in a delicate balancing act to make sure all of your bases are covered. Or can you continue to make things work even with less personnel?

BREWER: I thank the congressman, and thank you for the kind words. It's a pleasure to be here before the committee today.

We are very, very concerned about the reduction in staffing. It's a 13 percent reduction in staffing for the TSA in Providence alone -- 32 employees. We're currently allocated 259, destined to go down to 227 if, in fact, this reallocation takes place.

We have setting new records. In fact, this second quarter of 2005 was an all-time record of passenger loads for the TF Green airport ever. We are doubling the national average -- about a 4 percent growth -- this June was 8 percent over last June, up 5 percent year to date. We are exceeding our all-time record, which was the year 2001. We were on a very fast track for a record year then until September 11th took place. We are beating those numbers this year.

To be able to say that someone cranks some numbers and now say we need 32 less or 13 percent fewer screeners for more traffic is inconceivable for me.

What happens is that we do not have the authority -- the FSD does not have the authority to even keep us up to his current level because that is centralized, it's controlled down in Washington.

Someone, I'm sure well-intentioned, looking at the bigger picture, but they put the brakes on -- a halt to the hiring process. People that would like to work for TSA have to trek up 60 miles to an assessment center up in Chelsea, Massachusetts for the privilege to work for TSA. It's inconvenient; it's inconsistent.

Now, the one thing I would like to say, though, is that we have a pilot program at this assessment center where the federal security director does, in fact, have some involvement in the hiring process. Previously, he had none. It was done by a private contractor. The first time he saw employees was the day they walked in the door. We now have some opportunity to do that. And, in fact, the congressman talked about law enforcement capabilities: He does look for that.

In fact, we had an incident on July 13th where a gentleman went through the security checkpoint, alarmed, was challenged by the TSA, became belligerent.

BREWER: A law enforcement officer was called over, and a fight ensued. The passenger struck the officer, went down and was wrestling with him in an attempt to get the officer's gun.

Two of the TSA employees, one a former law enforcement officer and one a former corrections officer, got into the fray and actually assisted our police officer until backups were there. Momentarily, only a matter of seconds, but clearly that kind of expertise and thinking under pressure could have saved lives. And as far as I'm concerned, they're both heroes.

LANGEVIN: On the issue, though, of security, can you elaborate on that? Will security be compromised as a result of these redactions?

BREWER: Absolutely, Congressman.

And the problem is when there are longer lines at the security checkpoint because with staffing levels reduced -- we currently have seven lanes at our checkpoints -- they will only be able -- I did talk with the federal security director yesterday. They will only be able to staff six.

Currently, we have one of the shortest lines in the nation except during peak holiday periods and then we do have some concerns. What's going to happen is every day is going to be a peak holiday period with lines of 40 minutes or more. And we can have up to 1,000 people in line which just creates a tremendous terrorist threat; it's an opportunity for someone to do evil to a lot of people all at the same time.

And it's because we cannot get the people through the checkpoints fast enough. If anything, as we're growing, we need more people, not less.

LANGEVIN: I know that my time has expired, Mr. Chairman. If I could just have an additional couple of seconds just to ask one more question.

LUNGREN: Sure.

LANGEVIN: Thank you.

With respect to flexibility, for FSDs, can you go into a little more detail about what kind of improvements could be made to make your job easier?

BREWER: Absolutely.

I think that the biggest improvement that we could make in Providence and I think at most other airports is enhanced technology. We can only improve customer throughput and improve security by enhancing the technology.

If there is a mission by Congress or by TSA to reduce staffing, it has to be replaced with technology. The only way that is currently viable to do that is the integrated EDS system. That's why Congress needs to start appropriating more money, I believe to start getting integrated EDS systems across the country sooner.

LANGEVIN: And I know that we're about 89th out of the list of (inaudible)...

BREWER: Correct.

LANGEVIN: ... waiting for our letter of intent.

BREWER: That's correct.

LANGEVIN: And we need to move more quickly than that.

BREWER: One of the things that TSA has asked us to do is airports to, quote, "lean forward." Those airports that lean forward for security, they will take a better look -- put a better eye on the ability to reimburse them through an LOI when the money becomes available. And we're doing that.

LUNGREN: The gentleman's time has expired.

LANGEVIN: Thank you.

LUNGREN: The gentleman from Washington, Mr. Dicks, you're recognized for five minutes.

DICKS: For those of you who this applies to, how do you reconcile TSA's failure to issue new letters of intent to help airports get the equipment they need to improve screener performance with that approach?

I mean, it isn't happening.

BREWER: My belief, Congressman, is that the reason that there aren't letters of intent out there is because they don't have the money to give out.

Each year, they get between \$250 million and \$300 million a year, which, with nine airports that already have the LOIs, -- the LOIs are over four years or five years. If you take nine airports and take one-fifth or one-quarter of what the TSA has obligated to pay, that comes up to be the \$250 million or \$300 million that...

DICKS: So we're not getting enough money.

Now, is it not true that, if we did upfront the money, that this would, in fact, save us money in terms of the number of screeners that would be necessary?

BREWER: I believe there have been several studies that show that to be true.

DICKS: What do you all think? I mean, you're the operator...

BREWER: I absolutely believe it's true. And, in fact, the allocation of people from -- as I mentioned in my testimony, Congressman, our FSD is obligated to do what he calls the dance. He takes people from in the terminal building, lobby-installed EDS equipment, takes them off of that to put people at the screening checkpoint because the lines are getting too long.

Now, what happens is we have less EDS equipment that's available so the lines get longer there. Then, when those get unacceptable, he switches them back. It is a dance that he has to do. During holiday times and during peak periods, he has to bring in people on mandatory overtime.

DICKS: Well, now, we have a cap here. Is it 45,000?

BREWER: Correct.

DICKS: Now, I think the cap is unwise. We did go up to a very -- I think a much higher level. And then the Appropriations Committee put in this cap.

Would it be better to let the TSA manage this issue? I mean, they've got to have the extra resources, obviously, to hire the people and to have the people.

But shouldn't it be based on what's needed on an airport-by-airport basis rather than having a national cap?

BREWER: Personally, I believe that to be true, sir.

The TSA commissioned something called the Regal model. My understanding is that the Regal model calls for much more than 45,000 screeners. And what's happening is, as airports are growing, the industry is rebounding, traffic is increasing -- other airports -- legitimately so -- and I was looking through the report that TSA issued the other day, and I give kudos to some of the airport directors who apparently had no service before and now have service, and they're getting onesies and twosies and fives and 10s and 20 screeners.

TSA is obligated to find them from somewhere.

BREWER: So they're caught between a rock and a hard place. They know that there's increase in traffic, and yet we lose 13 percent of our screeners when our traffic is double the national average in terms of growth.

It's inappropriate, as far as I'm concerned, and I think the TSA is probably doing the best that they can with the limitations that are put upon them, but I don't believe that 45,000 is the right number until such time as technology comes into place to replace those screeners and then you can reduce the number.

DICKS: So what you're suggesting is that Congress has to reconsider this number.

And I think with the rebounding industry, with traffic up, we certainly see this. I'm out to the Northwest at Seattle/Tacoma. We certainly have seen that. We have a tremendous increase during the summer coming up this next month, August, and we really appreciate the fact that TSA has given us relief over the last two or three years.

But they've had to take it from somewhere else. It's a zero-sum game, as you mentioned. So other airports or other regions, you'll have to lose people in order for us to get the people we need.

Now, we appreciate getting them. But I just think that this is something that Congress ought to reconsider and that this committee should talk a position on and let the appropriators know that we think there is a problem with this 45,000 cap.

Anybody else want to comment on that?

DEMELL: I have a comment.

There's another issue that comes into play here, a TSA hiring process that doesn't allow for maintaining that 45,000-person workforce.

A TSA screener, once he hits the floor, that screener was recruited, was assessed, was trained and put in place by the private sector. And once he gets there, his H.R. function is managed by the private sector.

DICKS: I didn't hear what you said. His what?

DEMELL: The human resource function is managed by the private sector.

But the problem with the assessment process is most businesses can hire on an as-needed basis. And in this industry, because of the seasonality, it's critical. Under the present system, that doesn't happen.

An FSD has literally got to raise his hand, get in line, hope that there are funds allocated for an assessment process to hit his airport and therefore can only hire when the system allows him to do so, not when he needs to.

So the real question, along with the 45,000-person cap, is how many of those 45,000 screeners are actually on board and working?

DICKS: And that number is substantially below 45,000.

DEMELL: I would think so. I don't know what the number is but I would think it's not at the 45,000 number. And, in fact, I've heard suggestions that at any given time one-third of the workforce is not available for work.

On the private sector in Kansas City, we're running a test program. We have our own assessment right at the airport. We don't have to go to a regional assessment center; we can do it right at our airport. And that allows us, gives us a better opportunity to meeting staffing standards where they need to be.

And, in fact, that flexibility could very well allow you to operate with fewer screeners as long as those screeners are actually there and working.

DICKS: Does San Francisco have the same situation?

MARTIN: Covenant is able to do the testing and screening on site as well. But I believe that, nationally, the ultimate solution is to go to an in-line screening system at all of the major airports, with a very short payback period.

It just doesn't make good business sense. It doesn't make sense from a security perspective.

Clearly, these machines do a much better job than the lobby machines at catching plastic explosives.

The TSA could enter into LOIs with all airports and reimburse those airports as the TSA realizes labor savings. So, in effect, there's no money out the door in advance from TSA.

DICKS: I mean, Congress might even consider giving a borrowing authority. In other words, we do this for other entities within the government, saying, "You can go out and borrow the money."

MARTIN: We all certainly have the ability to go out and borrow the money in advance of the funds coming...

DICKS: Just getting the letter of intent is your problem?

BREWER (?): Well, the real problem is the inability to think beyond the current fiscal year. I think that's the heart of the problem. The business is being managed one fiscal year at a time. There's no big picture, long-range thought process. Managing limited funds on a year-by-year basis is not going to get...

DICKS: And as was suggested, once you commit to eight or nine airports, it takes up all the money for five years so you can't bring in new airports -- when, if we did that, we'd save some money.

Thank you, Mr. Chairman.

LUNGREN: The chair recognizes Ms. Jackson Lee for five minutes.

JACKSON LEE: Thank you very much, Mr. Chairman, to the ranking member and to the ranking member of the full committee.

Let me thank the witnesses as well for their presentation. And let me offer my apologies if I pointedly ask maybe just one person a question. And the reason is, of course, that many of us have lived with this issue for a long time -- not necessarily on the Transportation Committee, but before coming here, I served as a member of the Aviation Authority in Houston, Texas, and have lived with aviation issues for a very, very long time -- also as a member of the National League of Cities Board of Directors.

But I think the key issue here for me, first of all, is to thank all of you for the hard task that you have, but, frankly, to put on the record that security is federal issue. And whether it is the Minutemen at the border, the frustration of Americans or the frustration with immigration or the frustration of going through checkpoints, the bottom line: The buck stops with us.

And, frankly, I do not feel safe. And I don't think America should feel safe, frankly. And it is particularly noticeable through the efforts that TSA has tried to make.

And let me say this: Having been involved in the early stages of Transportation Security Administration's frustration of beginning or how to recoup, actually collaborating with them some four years ago the whole job fair in my district, to open up some opportunities for people in the community, but as well to stop the bleeding where they were not getting the numbers of individuals that they needed to pull through and to select to be able to place at their particular airports.

I, frankly, think that we have what we call security fatigue.

And we have been very fortunate. We look at what happened in London, what has happened in Madrid -- we are very, very fortunate.

And the statistics show that the private screeners are as poor as the federal screeners. But the federal responsibility is greater than a private entity.

They can have poor participation and poor work habits and a poor track record at the private company, but the federal government and the American people look to the federal government and entrust in them the responsibility.

JACKSON LEE: So frankly, I believe, and those of you who lead airports, that we need to do a better job. Frankly, I believe the cap should be removed. Technology needs to be rendered. We need to look at TSA in a way that it is a front-line security emphasis.

For example -- this is, sort of, an extended issue -- anyone that has any conversations without letting anyone know that you are having conversations with a U.S. marshal. They are multi-talented and probably former law enforcement agents. What do we do with them?

Instead of expanding them and using them in a very constructive way even if it means using them in other, sort of, security means, we relegate them to the airlines and we constrict them in terms of how they can double-duty.

I see the same kind of opportunities for Transportation Security Administration in these inspections (ph).

Now let me cite for you, Mr. Bennett -- I'm going to come your direction. I'm going to leave these fine gentlemen who have their individual airports and problems alone, but you represent the Council of Airports Executives and we've interacted with them, many of us have.

So let me just say this. You've got -- Mr. DeCota, I'm not sure if you have LaGuardia Airport, but let me cite him for example. You've got individuals who mean well but are lacking, not only in security, but in the social graces. You've got long lines because you have people lacking in the social graces and the ability to look at items and even know what they're looking at.

So you have one person who says to a traveling member of the public when they go through and rings, "Go over and be checked," when we know that you get a second time to go through. Unless there's something that I don't know about.

When the passenger attempts to ask and make an inquiry, a simple inquiry, the person suggests that they're getting out of order and, "You better get over here and go somewhere." That's an altercation. I don't know what happened to the gentleman who was wrestled down; that's a security risk. But that's an altercation.

So TSA has an enormous responsibility, but it's the federal government's responsibility, and we need to darn sure take it. Because I don't believe that the private screeners have any liability that would answer the question to the American people on 9/11 why these folks got on through Boston and the other places that they went on.

Private screeners were responsible for that. And I am not convinced that they can be any better. But I am convinced that we have an obligation for the federal government to be better.

Private screeners have discrimination charges. I'm reading an article here, "Employees Allege Discrimination by Airline Contractors." There are a lot of problems.

Mr. Bennett, would you just simply answer this question? You've given us solutions.

Why don't you think that this is the responsibility of the federal government and have these solutions of options for private contractors? Why don't you work with us, the Council of Executives, to ensure that we have the 45,000 above, that we have training and technology? That's the better route rather than relying on this option of private screeners and other such options that you recommend in your testimony.

BENNETT: Thank you for the question. I thought I was going to sit here all morning without having the opportunity...

JACKSON LEE: I know your good work. You've got a great organization.

BENNETT: Thank you.

And just for the record, as I also am representing these organizations here today, I'm also the president and CEO of the Metropolitan Washington Airports Authority, which operates Washington, Dulles International and Ronald Reagan Washington National Airport.

JACKSON LEE: I'm glad you said that. Thank you.

BENNETT: I am one of these folks also and wearing a couple of hats here today.

The federal government has a very, very important role in terms of security of the aviation system. It is most appropriate that the federal government be deeply involved in that, that they set the standard and, in many cases, that they actually perform the function related to the safety of the aviation system.

BENNETT: That goes without question.

But also a very critical and important partner in the security of the aviation system are the public agencies that own and operate the nation's airports.

And these public agencies, such as ours, such as all of my fellow panelists here, are governmental entities that have safety and security as their number one priority. And, in fact, they provide first response to all acts of not only terrorism, but day-to-day civil and criminal activities not only at their airports but throughout the communities in which those airports are located.

So we're very much safety and security entities as well as airport operators. And we think that we have a very important role to play in the security of the aviation system, a role that, to be honest with you, has been overlooked as this model has evolved over the past four years.

And many of the members of these organizations would like very much to have the opportunity to become more involved in the security of the aviation system because they believe that there are the opportunities to actually enhance and improve the security and make it better than what it is today.

JACKSON LEE: Mr. Chairman, I'd like to ask unanimous consent to put an article in the record, the Houston Chronicle, July 13th, 2005, "Employees Allege Discrimination by Airline Contractor."

And I'd also like to put on the record a question that the gentleman would respond in writing is to the lack of crew lines that either the airport designates or maybe TSA designates and the frustration of crews who have been, if you will, targeted and seemingly discriminated against by TSA personnel.

I know that will be but I need to know whether airports have a particular designation for crew members going through.

LUNGREN: If I could just reserve the right to review it, I'd put it in the record.

JACKSON LEE: Thank you.

LUNGREN: I thank the lady for her questions.

And I thank the panel for their participation. It's a large panel. I'm sorry that we didn't get all the questions asked that we might want to. But you've been very, very helpful to assist us in our overall inquiry.

The chair would now like to call the second panel: Mr. Thomas Blank, the acting deputy administrator of the Transportation Security Administration of the Department of Homeland Security.

LUNGREN: Mr. Blank, thank you for returning to appear before our subcommittee. We appreciate your appearance.

As you know, your written testimony will be placed in the record in its entirety. We'd ask if you could summarize that, perhaps, in five minutes, and then we could go into a round of questions.

BLANK: I thank you very much, Mr. Chairman, Representative Sanchez and other distinguished members. I'm pleased to have the opportunity to appear before you today on behalf of the Transportation Security Administration to report on the performance and management of our nation's aviation screeners.

Passenger and baggage screening is an essential component of TSA's layered approach to security. Although the public is currently focused on rail and bus security, the aviation system is still a significant target.

Screening passengers and their property in a way that ensures security and operational efficiency requires TSA to maximize all available resources, including personnel, technology and partnerships with the private sector.

Training is essential to improving passenger and baggage screener performance. Several current initiatives include an extensive review of our screener training program, improvements to our online learning center, which provides Web-based training and tracks the completion of required training, and the development of high-speed operational connectivity to ensure that Web-based training reaches all of our screeners nationwide.

Our experts are looking closely at the new-hire screener training program to structure the process to ensure that it's a stable, repeatable process that is flexible enough to meet the operational needs of all major airports, as well as smaller airports.

This approach will allow screeners to be operational in less time than the current new-hire training cycle.

Recurrent screener training was also recently examined and, as a result, those training courses and guidelines will be updated to meet current operational requirements.

In addition to completing all training requirements, all screeners must meet annual recertification standards. The process includes passing a standard operating procedures job knowledge test, an X-ray image interpretation test and a practical skills demonstration, as well as to meet or exceed these expectations on an annual performance assessment.

During 2004-2005 screener recertification, the national pass rate for screeners was 98.7 percent.

In addition to recertification, TSA uses the following indicators to measure screener performance: percentage of screeners scoring above the national average on threat image projection, the percentage of screeners scoring 85 percent or better on their annual performance recertification examination on their first attempt, and the results of the annual performance review.

TIP tests identify a screener's ability to see false images of weapons or other dangerous prohibited items on their X-ray equipment provide immediate feedback and enhance the screener's vigilance by randomly and periodically exposing screeners to new emerging threat.

The TIP test results have shown a steady increase in screener performance on threat detection.

BLANK: TSA uses several tools to measure the effectiveness of screening and screening machines including TIP results, covert test results, screener training exercises and assessments test results and screening machine performance data. Based on the results of these tests, TSA has made numerous changes to screening policies, training and equipment.

In short, TSA has made great strides to provide the best training, equipment and technology to the nation's aviation screeners. TSA will continue to maximize all available resources to accomplish our mission of ensuring the security of the nation's aviation system.

And if I could, in the time remaining, I would like to address the one issue that has come up here this morning, and it has been reported in the press and has been discussed by the Department of Homeland Security's former inspector general. And that goes to screener performance today versus screener performance on 9/10/01 as evidenced in covert tests.

And let me assure you that there is no comparison whatsoever between what was going on in terms of covert testing on 9/10/01 and the covert testing that's done today. And to allege that the screeners do not perform any better today than they did on 9/10/01 is a canard.

I brought with me an actual 9/10/01 FAA screener test object. This is the briefcase that would go through the screening machine on 9/10/01. And inside, just this briefcase, nothing else, nothing else, is this: This is a 9/10/01 test object in a briefcase with nothing else in it. And that's right off Disney's back lot. That's Wile E. Coyote right there. Nobody is going to miss that.

Yet those screeners on 9/10/01 did. And I will assure you that there is nothing -- and outside the classified setting, I'm not going to show you today's test object, but they do not look like this particular FAA-approved test object that was in use in those times.

With that I'll suspend. I'd be pleased to take the subcommittee's questions.

Thank you, Mr. Chairman.

LUNGREN: Thank you very much for your testimony. We appreciate that. We appreciate the visual addition we have here today.

Let me ask you a couple of questions.

Before 9/11, it was widely reported that annual attrition rates at the private screening companies were extremely high. How do current attrition rates for TSA screeners compare?

LUNGREN: And how do current rates for private screeners at those five pilot projects compare?

BLANK: Prior to 9/11, screener attrition rates were over 100 percent annually with the private sector companies that managed the function under airlines' regulation -- or our regulation, but airline costs -- at that time.

TSA seems to have stabilized at an annual attrition rate of 23 percent, 24 percent. That's what we have seen over the past couple of years.

The private sector companies -- I'm not precisely certain, but I do think they do have a bit lower attrition rates. And what I would suggest there is that, obviously, we're dealing with many more thousands of people than the private sector companies are, and you have to take the attrition rate apart and say, "What's voluntary attrition and what's involuntary attrition?"

And when you do that, you'll see TSA's attrition rate drop to about 18 percent, which means that we're firing some people for on- the-job actions: perhaps they commit a crime, they don't perform properly or something along those lines.

LUNGREN: Are there any areas in the country where the attrition rate is significantly better or worse than the national average? And if so, do we know why?

BLANK: Well, there are differences amongst regions. And I'd attribute that to two things.

One, local job markets make the screener profession more attractive in some areas than in others.

And, candidly, airport TSA management can have something to do with that. So if we see an airport with a particularly high attrition rate, that would signal to us that we need to go to that airport and find out why that's occurring and what management improvements we want to make.

For instance, Houston Intercontinental has a very low attrition rate. It's down around 13 percent. Washington Dulles, who testified here, has a bit higher attrition rate. It is a problem for us at Dulles because there is not good public transportation to get out there, and because the cost of living and the competitiveness in this particular region to get and maintain screeners is a challenge.

So a number of factors are built into it, but there are differences.

LUNGREN: With respect to the flexibility that's allowed in the workforce, we have all types of airports. We've got the busiest airports -- some of the people talked about that -- we've got some that are not very busy, where it seems to me it would be very hard to figure out how a TSA screener, if that's all they were allowed to do, could possibly fill up eight hours.

Do you have situations where someone is at an airport that only has a couple of flights a day, that your employees work split shifts? Or what do they do when they're not confronted with anybody?

BLANK: Well, that's a scheduling challenge. And what we would do is, where we see airports with a bank of flights in the morning, a bank of flights in the afternoon, we would try to emphasize part time, so that those individuals could come and go.

We would also use job-sharing agreements, where we might have two individuals that, maybe over an 80-hour week, two or three people are splitting those 80 hours up in some fashion or other.

BLANK: Somebody might work 40-20-20 for other two people, and that sort of thing.

So wherever we can get that kind of flexibility, we're definitely taking advantage of it. But it can't be perfect. It's hard and it's expensive to recruit part-time screeners. It's expensive to train them.

LUNGREN: I was just wondering -- you know, again, I go back to the Southwest Airlines model. Before Southwest Airlines every airline felt that you had rigid job assignments: that's all you could do, you couldn't do anything else. Southwest showed that you could have people do more than one thing.

And, again, I'm not an expert in this, but it just strikes me at some of these airports where you've got very little to do in terms of screening, just because of the nature of the service, whether flexibility where someone screens part of the time and does something else another part of the time.

BLANK: Under the Screening Partnership Program, at some smaller airports that we refer to as category 3 and 4, we would like to explore an arrangement where we shared an employee with the airport authority.

And let's say we had a situation with a bank of flights in the morning, as I said, we need a screener for two hours, we got a bank of flights in the afternoon for two hours. We would like to explore an arrangement where that individual is then for four hours in the course of the day on the payroll of the airport authority performing some function that's necessary in the context of those operations. We hope to be able to do that.

LUNGREN: I thank the gentleman.

The chair recognizes Mr. Thompson for questions.

THOMPSON: Thank you very much, Mr. Chairman. And I appreciate the opportunity given me by the ranking member of the subcommittee to go and do a number of things that I'm already late in doing. I'm sure I'll have to make it up, though, nonetheless.

Mr. Blank, you heard -- I hope you were here for the testimony of the first panel.

BLANK: I heard it all, sir. I watched it in the next room.

THOMPSON: Mr. DeMell said that TSA had provided a directive that said that private security people could not organize. Are you aware of such a directive?

BLANK: That's not correct, sir.

What we have said and our policy has been is that screeners may not, whether they are federal or private, engage in collective bargaining. We will not engage in collective bargaining. But if the private sector screeners chose to organize themselves into a union, we have no policy and made no statement against that.

THOMPSON: I'm glad to hear that. And I'm glad we're on the record.

Several times members of the committee have been made aware of situations using the transportation worker identification card, and the fact that people are showing all kinds of identification when they're going on airplanes. And some of those identifications are expired passports, expired driver's license, any number of things -- television station I.D. cards.

Where does your operation fall in this?

BLANK: We would like to take logical and reasonable steps to move to a place where you are absolutely required to have some sort of government-issued I.D. with picture displayed in order to be able to get your boarding pass and enter the sterile area and get on an airplane.

We think the REAL I.D. Act is going to bring some standardization to driver's licenses and other credential, is going to help get us in that direction.

We think our work on law enforcement identification verification, because there are so many different kinds of law enforcement credentials, we think that's going to help.

But as of today you do not have to have identification in order to be able to fly. If you were to come to the airport, have forgotten your wallet and not have identification on you, you would be permitted to fly, but you would be subjected to secondary screening. And we're not comfortable with that. We want to do better than that.

THOMPSON: That's news to me. I just assumed that if you left your I.D. you couldn't get on a plane. That's good.

So at what point do you think TSA will have a hard and fast rule on identification?

BLANK: We're going to be influenced in that by other federal government activities. The REAL I.D. Act is going to have a benefit to TSA, but it's not TSA's to implement. HSPD-12, which is going to standardize federal credentials, will have a positive impact on that.

So we'll continue to evaluate against threat and other risk information whether or not we should do that, at what rate we should do it or whether we should let what's happening as a result of other federal initiatives fill that gap for TSA.

THOMPSON: Well, I think we need to clear it up. It is confusing. If I have an electronic ticket, I have to show that I'm that person. And what you're telling me now is that that's really not a policy.

BLANK: Well, the issue is the validity of the credential that you have. In other words, what we need to be able to make ourselves sure of -- we may do this through some biometrics or other ways that we standardize credentials, but if you have a fraudulent credential, it is still possible -- there's a chance we're going to catch you, but it's possible that that fraudulent credential could be used to get you aboard an aircraft.

And so eliminating fraudulent credentials is the objective.

THOMPSON: If you'll bear with me, Mr. Chairman.

So there's no regulation for the I.D. or what is it now?

BLANK: Well, the regulation is that you are required to show government-issued I.D. at the time you get your boarding pass. Then we require the airlines to check that I.D. at the top of the line approaching the checkpoint. That's the requirement.

Now, if an individual presents themselves and they do not have any identification, the procedures would be to say, "Well, you will be subjected to secondary screening." And you would be patted down, hand wanded, and your carry-on bag would be examined.

THOMPSON: And I could get on the plane without I.D.?

BLANK: You could, sir.

THOMPSON: So, conceivably, bad people can get on planes without identification?

BLANK: Conceivably, they could. Then the next question is, could they bring that plane down? And what we would say is that the layers make that a reasonable risk, at least for now. Armed pilots, hardened doors, trained cockpit crew, federal air marshals, inspections and the other security measures make that a reasonable risk for now.

THOMPSON: So do we have 100 percent luggage screening in this country now?

BLANK: Yes, sir.

THOMPSON: What about cargo screening on that passenger plane?

BLANK: There is 100 percent screening of all cargo going into the belly of a passenger plane. Some of it is physically screened and some of it is screened through the protocols of the Known Shipper program.

THOMPSON: Thank you very much, Mr. Chairman.

LUNGREN: I thank the gentleman.

Mr. Pearce?

PEARCE: Thank you.

Mr. Blank, does TSA measure wait times?

BLANK: Yes, sir.

PEARCE: And how do those compare with TSA-operated airports and private-operated airports?

BLANK: Let's take a look at yesterday. San Francisco's average peak wait time was eight minutes. Providence was 11 minutes.

PEARCE: Nationwide, do you compile the data?

BLANK: The answer is yes, but we compile it daily for the top 40 busiest airports.

PEARCE: And so nationwide, if you compiled the private screeners and the TSA screeners, what's the nationwide average? Are they comparable?

BLANK: Yes. Yes, sir, they are.

PEARCE: They're equal or comparable?

BLANK: They're comparable, but they're not exact. SFO was eight minutes, Dulles was 12 minutes.

PEARCE: What about worker's comp? What's your worker's comp modifier for a TSA employee?

BLANK: I'm not sure I understand the term "modifier," but it's 36 out of 100.

PEARCE: Modifier is an assignment by the insurance company. The higher your injury rates then the higher your premium is going to be. And if you all don't have to go through the regular worker's comp system, how do your worker's comp injury levels per thousand compare to the industry?

BLANK: They are high. Transportation workers, whether they're luggage handlers or TSA workers are high.

PEARCE: How high? And how much higher?

BLANK: They're approximately in the low 30s per 100. And that's high.

PEARCE: And what would they be among screeners in just private industry?

BLANK: They are considerably lower. I believe that they are in the order of eight to 10. But it's difficult to make a direct comparison, because the definition of injury for the federal government is broader than it is for the private sector. And the private sector costs, which is what you measure against, mainly reflect insurance premiums.

PEARCE: Having been in private industry, I don't see how you can say that you have a broader definition. I had to report every single thing, so we'd have lost injuries due to fingernail that was torn into the quick. I don't think you can get much broader than that. Frankly, I'm not sure. I would appreciate seeing objective data on that.

There was funding diverted in the first year from equipment purchases to hiring costs. Is that still a function that's going on? Are we moving money from equipment to salaries?

BLANK: There may have been relatively small amounts from equipment to salaries. We have moved money to salaries.

PEARCE: It was above \$100 million I think.

BLANK: Well, it was primarily out of I.T. costs or high-speed operational connectivity and out of training, as well as some equipment.

But we've spent, literally, billions of dollars on equipment. The EDS equipment program is just about the largest program in all of the Department of Homeland Security.

PEARCE: Are we seeing an accompanying decrease in salaries and the number of FTEs? That's what the private screeners tell us; that if they get the right equipment they can lower the personnel costs. Are you seeing that related decrease there?

BLANK: We know that we have efficiencies where we have in-line systems, but we are seeing increases at the checkpoint. So if we're able to reduce on the baggage screener side of the house, they're needed on the passenger screener. So overall we're not seeing a net personnel need reduced.

PEARCE: The initial projection for salaries was in the \$100 million range in the first year. It went to \$700 million. Does that anomaly still exist? Are we still running seven times what we thought on salaries?

BLANK: I think that's relatively the correct number.

PEARCE: So we have \$700 million in the first year and part of that \$700 million went -- I think there was \$1,500 for four or five extension cords in one Washington Post report. Are we still allowing those kinds of expenses to occur?

BLANK: The Washington Post was in error, sir. They reported that Eclipse got \$21 million. If you look behind the curtain, TSA rejected all but \$6 million of those costs.

So if Eclipse spent \$1,400 for extension cords, TSA and the federal government did not pay for it.

PEARCE: You're saying then that The Washington Post may be even in excess of partial error of the whole concept that we had an absolute nightmare in processing (ph) people? Was The Washington Post article incorrect in that regard?

BLANK: I would say this: I know what TSA paid to get that job done. What NCS Pearson (ph) may have paid its subcontractors, I don't have (inaudible) of contract and it's none of my business.

I know what we paid, and there's a couple of things that are at work, one of which is the way the money was appropriated. We can't go anti-deficient, so if we put \$100 million to something that we well know is going to be more than that, we only put \$100 million to it so that we don't make commitments that we can't pay for.

So that's part of the fits and starts. But there's no question that the requirements of the contract changed in order to get the job done, and that's why it went up significantly.

PEARCE: Thank you, Mr. Chairman.

My time has expired.

LUNGREN: The chair recognizes Ms. Sanchez for questioning.

SANCHEZ: Thank you, Mr. Chairman.

And thank you, Mr. Blank, for being before us today.

I just want to follow up on something that the ranking member, Mr. Thompson, asked you. He asked you if 100 percent of cargo in the belly was checked and you said yes.

Do you not mean that there are some companies who ship quite a bit and so they're in a special program and so they certify that, in fact, they've done all the right things and therefore that cargo gets on but it's not necessarily checked?

BLANK: Well, ATSA requires us to screen 100 percent of all cargo going in the belly of the aircraft. Our policy is that the Known Shipper program counts for screening and for compliance with ATSA.

And what we have done over the years is gradually increase the requirements for physical inspection. I can't say the precise amount because that's classified. But we had regularly increased the amount that is open or put to an EDS machine or X-rayed.

But the screening for that cargo is that it comes from a known shipper. The people that are handling that have been subject to background checks and a number of other things. I can't go into any classified study but that is what we use to screen at this time.

SANCHEZ: And when you say "known shipper," that's like a DHL or something, right?

BLANK: They have to comply with various provisions that we lay down in order to be a known shipper. DHL may or may not be a known shipper but we would be more interested in DHL's customers. DHL may bring us cargo for the passenger aircraft belly, but they can't bring us a package that does not come from someone who is a known shipper.

SANCHEZ: So if I never shipped and all of a sudden I want to ship something and I give it to DHL, you are telling me that you're either going to put that piece through a machine or you're going to open it up before it gets on the belly of the plane.

BLANK: I think it would be -- actually, DHL would take that from you, determine that you are not a known shipper, and they would get your package there on other than a passenger aircraft, either over the ground or on an all-cargo aircraft, or they would subcontract to a charter cargo operator.

SANCHEZ: So that package would have no possibility of going in the belly of a plane...

BLANK: If it does not come from a known shipper.

SANCHEZ: ... that's carrying passengers?

BLANK: That's correct.

SANCHEZ: All right.

I have another question for you. We learned on Tuesday that you're undertaking a massive reduction of the 45,000 screeners that you have. And there's a chart that was provided to us that sets forth all the different changes.

And it affects all sorts of airports: what I call large airports like Atlanta and smaller airports like my John Wayne Airport. Atlanta loses 21 screeners. Portland loses 168 screeners. My airport in Orange County, John Wayne Airport, loses 28 screeners.

And my question to you is, this is coming in the middle of what I thought was a record-breaking summer travel season. Can you tell me how you determined, what kind of factors you looked at, what criteria was used to make these proposed reductions? When would this reallocation occur? How often do you expect this kind of a shift to happen like this? How are federal security directors and our airport authorities notified? And how are they supposed to adjust to those allocations of the workforce?

And why does an airport like Atlanta, where every time I go through it it's completely and totally backed up as far as I see -- maybe I just travel on peak time or maybe I just travel at a time when thunderstorms are hitting every time or what have you, but every time I go through that airport, it seems there's chronic lines and checkpoint problems. Why are they losing screeners? How did you determine this?

BLANK: Well, if I can just give about 30 seconds of background.

How did we determine how many screeners an airport needs anyway? And we, going back to February of 2002, when we began to federalize checkpoints, we looked at the private sector model that was in place at that time; that guided us. We got very smart consultants and industrial engineers, and we modeled checkpoints so that we could come to a number of what it would take to do the checkpoints across the country.

You'll recall, that really didn't work very well because that's where we got 60,000 screeners, looking at what was out there and making some theoretical judgments.

So that cut back, and currently capped at 45,000 FTE, and that's not a body count, that's a money count.

The next thing we did was try to develop a model on our own, and the model that we used considered enplanements, numbers of enplanements at a particular airport. And that factored in with a variety of other things, but that was a key driver in order to determine the allocation level.

Well, turns out that's not really a fair guide, either, because we really need to get an understanding of passenger screens because a connecting passenger isn't going to be rescreened. And so enplanements doesn't do for you what we need to do.

So we have worked over the past year to develop a screener allocation model that seeks to look at what happens in five-minute increments at peak times, and what we need to do in terms of processing. We were guided by a goal of processing through in 10 minutes.

We looked at the number of checkpoints, the number of lanes in all of these airports. We looked at expected expansions, changes in flight schedules. We looked at arrival patterns so that we can understand that. And we included non-passenger demand, like airline employees and crew that we have to process through.

We used a sophisticated time and attendance software product that we call SABER (ph) that would help us understand staffing and plug in a lot of the industrial engineering that we have used.

So we came out with a reallocated number and then we understood that -- we've always said, "If you've seen one airport, you've seen one airport." We took that number out to the federal security directors and others at a particular airport and said, "This is what our inputs and a relatively sophisticated model tell us you ought to be able to do the job with here. If you have the right mix of full-time and part-time screeners and if you're getting the proper efficiencies, if you're managing that workforce properly, this is what you ought to be able to do it with."

And there was some backing and forthing. Some adjustments were made to these numbers.

And at the end of the day, there are some airports that we've determined that we believe are overstaffed and some that are understaffed, and it's our intent to make the necessary adjustments.

Now, with regard to Atlanta, they physically don't have enough lanes to handle the peaks at Atlanta. They need to do some expanded coverage of lanes to get people through in a Atlanta, so that's a contributing factor.

They also have challenges in Atlanta to recruit part-time workers. We'd like to see Atlanta have about 20 percent part-time workers in its workforce. They have only 2 currently.

So that makes for some serious challenges that we've got to fix, from a management perspective, at a number of these airports.

SANCHEZ: Thank you, Mr. Blank.

I'll just add that we use IAD a lot here, and I've noticed that you're going to increase it by something like 79 people.

SANCHEZ: That's good. Because two weeks ago, we waited an hour and a half in that security line.

BLANK: I'm sorry that happened, Congresswoman.

SANCHEZ: Thank you.

LUNGREN: The gentleman from the state of Washington?

DICKS: Thank you. And we appreciate your good efforts and good work.

How many active, ready-to-work screeners do we have today?

BLANK: You mean in the screener workforce?

DICKS: Right; that are under the 45,000 cap.

BLANK: Well, we have 47,600 screeners out there. And that equates to, right now today, approximately 43,500 FTEs.

DICKS: So the 45,000 is FTE.

BLANK: That's correct. Think of that as a money number.

DICKS: OK.

How many of those -- how many are working today?

BLANK: Over 47,000 are out there working.

DICKS: Some of them are part-time.

BLANK: Some of them are part-time. And I don't know that there's 47,600 people out there on the line today.

DICKS: OK, how many FTEs would there be, 43,500?

BLANK: 43,500 is what the...

DICKS: So we're under the FTEs by 1,500?

BLANK: Well, we are, but here's what we've learned how to do. The requirement in the statute is that we are at 45,000 FTE at the end of the fiscal year, September 30.

So what we have done to deal with the holiday period and spring break is we have been up over that. We've been up to nearly 47,000 FTE. And now what we have to do is we have to manage down under that during this particular period of time so that we don't go anti-deficient at the end of the year.

DICKS: Is that what this new chart that everybody's talking about today is an attempt to do, to get down, by October 1 of 2005?

BLANK: We're where we need to be in order to not go anti-deficient on September 30, '05. We're on-target.

DICKS: When you do this chart, OK, with all these different airports, what's the net of it? How much...

LUNGREN: Would the gentleman yield for just a moment?

Are you suggesting you're coming down at a time -- isn't this a busy travel time?

BLANK: We are operating the system, as we did last summer, with about 43,500 FTE. We're now ready to go back up, to head back up to...

LUNGREN: No, but what I'm trying to figure out is you're trying to go back down by the end of the fiscal year. You use the same fiscal year we do, right?

BLANK: No, excuse me. Let me be clear.

LUNGREN: The image you've just given us is you're going down at a time when air traffic is going up so that you can hit a number that we in Congress have said you have to have, which means you're listening to us but you're not listening to the public.

And maybe that's our fault. Why don't you to explain it?

BLANK: OK. Let me do it this way.

LUNGREN: Now that we've got you completely confused -- and ourselves confused.

BLANK: Historically, TSA did not hire up to the 45,000 FTE cap because federal security directors and others did not have the confidence that we understood our costs and the onboarding time and what our attrition rate was going to be, so that we would not go anti-deficient.

BLANK: In other words, if you were a federal security director and you were authorized 200 screeners at your airport, what you would do is you'd only hire up to like 190, because you would not want to go over the 200.

What we've gotten better at is to say, "You can go up to 225 at your airport to deal with Christmas time and the holiday season and spring break and even summer, but in the spring and the fall, you've got to learn how to get down under 200, to 185, so that you come out right at the end," OK?

So we have done that through the spring. And now, because we're dealing with the peak summer, now we're coming back up. And that 43,500 I mentioned, that's going to be 45,000 before long.

DICKS: Do you have enough training capability and the ability to find the people so that you can bring them in like that? Or are some of them full-time that go to part-time that go to full-time or go from full-time to part-time?

BLANK: Sometimes we offer a full-time and they might want to go to part-time. More often, we'll take part-timers and tell them, "We're making you full-time. Is that OK?"

There was a lot of discussion here about centralized hiring, and that was the only way we could get the job done in the early days. In the past 10 months we have done a great deal to push hiring authorities out to local FSDs and empower them to make job offers and do assessments and that sort of thing.

And it's working pretty well that we're being able to identify and get vacancies filled; not as good as we need to be, but we're getting better.

DICKS: Now, funding levels: What was your budget request this year? How many FTEs did you request in your budget?

BLANK: The president's budget requested 45,000 FTEs.

DICKS: So you had enough money in there for 45,000. Where are the House and the Senate Appropriations Committees on this issue?

BLANK: Well, for fiscal year '06, the House would cut the 45,000 by 2,000 and the Senate would cut it by 6,000.

DICKS: What was the thinking there? Or is there any? And I'm an appropriator, so I can...

(LAUGHTER)

I'm not on that subcommittee, however.

BLANK: I believe the thinking is that if you put more technology out there more quickly, then your personnel costs will go down.

DICKS: Well, that's the perfect lead-in then to the other question.

Now, you've got to answer -- you've got all these gentlemen behind you and 429 airports that would benefit from in-line EDS. And yet we only have -- wasn't there a contract for how many, nine?

BLANK: Yes, sir.

DICKS: And the money -- how much is your budget request for that item? Couple of hundred million?

BLANK: For in-line EDS?

DICKS: Yes.

BLANK: \$250 million...

DICKS: And that's obligated, right? That's already -- how many years before somebody new is going to be added to this system?

BLANK: Well, I'm not sure there is going to be anyone new added. We did not request any additional LOIs for fiscal year '06. And I can't testify...

DICKS: Is there anything in the president's budget over the next five years for additional in-line? They do a five-year projection here.

BLANK: Here's what I'd say. For now, we're not requesting any additional money for in-line.

But here's what I'd say. And I'd say this to and have said this to some of the gentlemen sitting behind me. Federal participation doesn't need to prevent them from investing in their own in-line system. Boston did so prior to the time that 9/11 happened. They have another line now but at the time Boston built, they did not.

Tampa, Lexington, Boise, Fort Lauderdale, are all investing in in-line systems without -- they have the hope but they don't have the commitment of federal reimbursement.

I'll also say to these gentlemen, you've talked a lot about growth and there is significant growth. The airline traffic is growing, it's back, new terminals are being expanded. And what that means is these gentlemen back here, they're doing pretty well in the collection of passenger facilities chargers.

If you ask the airlines, the NASPSA (ph), they're going to tell you, they're sitting on some cash that they could invest in something.

DICKS: What's the incentive for them, though? If the federal government is paying for the screeners and if by making the investment we've reduced the number of screeners required, that's saving us money. How does it save them any money? I mean, what's the incentive for them to do that?

BLANK: Well, they have to compete for business at their airport. Every region in the country these days offers a choice. And so they want new facilities, best facilities, customer-convenient facilities.

DICKS: OK. But let's get down to it.

If you walk away from this, there are going to be a lot of airports that are not going to be able to afford to do this or won't do it. And we then are stuck with the older equipment which is not as effective. I mean, Mr. DeFazio -- who by the way thinks you're doing a great job and told me, "Now, be very easy on Mr. Blank today." I said, "Well, we've got to ask him the hard questions."

LUNGREN: There's always a first time.

DICKS: Yes, there is always a first time.

But the bottom line is we need to get this equipment, this higher technology, out in these airports. Now, how are we going to do it if there isn't a federal program?

And you're basically saying there isn't a federal program in the future.

LUNGREN: If the gentleman could be brief, Ms. Jackson Lee is next up and I think we're supposed to get a vote shortly, so I want to make sure she has a chance to ask questions.

DICKS: Well, we have 15 minutes before they vote.

BLANK: OK. Let me come at it two ways very, very quickly.

When the president's budget came out this year and there was no money for additional LOIs, and that became apparent, I went to Airport Trade Association meetings and for the first time I saw equipment manufacturers stand up and say, "You know, there's different ways to do in-line systems and some of it doesn't have to cost as much as we really thought it did since we see the federal government share is going down."

So the manufacturers are our partners. The airports are our partners, the airlines and the federal government.

And who pays for what is a debate that we're very, very willing to have.

DICKS: Is the FAA involved in any of this? Does the FAA do any of this separately from DHS or TSA?

BLANK: No. In the early days, some airport improvement funds were allowed to be used for security, but that's no longer the case.

The other thing that I would say, in the context of the Department of Homeland Security, which this subcommittee and committee cares a great deal about, when I tell you that this program as it exists right now today, the EDS program, is one of the largest in all of the Department of Homeland Security, there are people that say, "Why would you make the largest larger? We have other threat vectors. We have chem, bio, rad. Why would we make the largest larger at the expense of neglecting these other threat vectors over here?"

So that's a policy debate we have to have too.

DICKS: But there is a chance here for a major saving.

Why not make some kind of a program, a loan program of some sort, a loan guarantee program of some sort available so that they can borrow the money and invest in the equipment and get us the extra increment of safety?

By not doing anything, I don't see how the federal government is providing leadership in an area where I think we have to provide leadership.

BLANK: I agree with you. And we are doing exactly that.

Airports are very good financiers, and we are engaged with a set of airports. And, in fact, the current draft of -- there's report language in the House appropriations bill for '06 that requires us to do a pilot program at five airports using creative financing aimed at turning the savings back. And we're engaged in thinking about how to do that.

While it's certainly not administration policy at this point, leasing of equipment might be an option in order to make these dollars go further.

DICKS: Thank you, Mr. Chairman, for being so lenient.

LUNGREN: The gentlelady from Texas?

JACKSON LEE: Thank you, Mr. Chairman.

I always offer my appreciation to the chairperson of the subcommittee and the ranking member of the subcommittee and, of course, the chair and ranking of the full committee.

Mr. Blank, let me also thank the staff of the Transportation Security Administration for taking up a very tough challenge and, by and large, for complimenting the vast numbers of hardworking agents that you have in the various airports.

I think it is important for America to know that TSA is in every airport, short of those who may have opted up, but if you're small, if you're rural -- when I say small, small, that you're not a private system -- you have the responsibility of having TSA agents. So that if you're somewhere in parts of South Dakota, North Dakota with a duly qualified airports, you are there as well as in the major airports in cities like Houston, New York, Los Angeles and others.

And might I also offer my appreciation for the very fine TSA personnel in the Houston Intercontinental Airport, my congressional district, and Hobby Airport in Houston, Texas.

Given those words of appreciation, let me also just restate again that I think that America's security is a federal issue. And I'm not convinced of the various obstacles and hills and valleys that TSA is traversing through.

I'm going to give you a series of questions along those lines.

First of all, if you had your druthers, what number of TSA agents, screeners? We're talking the number 45,000. What number would you suggest would be a reasonable response to the need that we now have?

What would be the option to encourage other airports to do the EDS in-line of their accord and then seek reimbursement? What kind of proposal would you put forward to this committee, for us to assist in that kind of reimbursement dollars so, in fact, that we could answer the question?

Where are we in terms of the Transportation Workers Identification Credential, TWIC?

JACKSON LEE: How far along are we in providing that particular identification card? And how much of an assistance would that give?

We've been talking dollars here and, of course, I have an adverse opinion about talking dollars and security. I think there is no greater responsibility other than adhering to the Constitution here in America.

Frankly, we're sitting in this committee talking about dollars. We're not securing America; we're talking about dollars.

I'd rather give back tax cuts that have no value to the American people, particularly as it goes to large entities, and give you the money, to be very frank.

Because one day there's going to be an enormously tragic incident, the likes of 9/11. It's just the nature of what we live in. And all of the human talent may not be able to thwart it.

But the one thing that we need to be able to say -- one thing you want to say, Mr. Blank -- "I did everything I could."

And right now, we cannot say that we've done everything that we could do. We're quarreling over 45,000 screeners. We're quarreling over EDS in-line. We're not doing everything that we can possibly do.

And then the other aspect is that we're not training the particular agents. The shortness of the training, the hard hours, the lack of flexibility -- which I know are your problems. These are good Americans, but they are not trained and they don't have the equipment. And we're quarreling about dollars.

So if you would, on this question of dollars, if an approved opt- out program did not produce measurable savings, meaning all this talk about privatization and customer benefits -- since we know the inspector general said it's four on your side and four on the private side -- do you agree it should be terminated and TSA screening reinstated? And is there some criteria?

I believe that we have failed in doing all that we could for your agency. And I cited -- I hope you were in the audience when I said LaGuardia in particular, I want to call them out, where somebody didn't allow a person to come back not three or four times but one time, shot them over to somewhere in an abrupt, ugly manner.

That's not security. And therefore we need to do a better job.

I'd appreciate it if you answer those questions. And let's be straight up with us. All of us have the burden of the lives of Americans on our shoulders. If we don't do the right thing, I don't want to wake up one morning and said, "I am sorry because I didn't do the right thing and I didn't do everything that I could possibly do."

I yield to the gentleman.

BLANK: Congresswoman, thank you very much for your comments about TSA. Let me address the opt-out program.

For opt-out Screening Partnership Program, we are guided by the statute at TSA with regard to that program, which is to say that we are to make it available.

BLANK: We are not to incentivize it. We are not to prefer one model over the other. We're to have it available to an airport that wishes to go down that line. And we're further instructed that the screeners must be paid the same and they must perform to the same standard.

With regard to overall number, I'd like to roll the clock back a little bit to '02, when were in the process of going electronic for baggage screening in all of the airports. And we consistent heard that we were going to bring the aviation system to halt, the airports were going to be in chaos, air travel would simply not exist. And that didn't happen.

And now we're hearing about untenable wait times because of the 45,000 cap and so forth.

And we've monitored it closely. We look at it very, very carefully every single day. But what we don't see is a metric that is telling us that that number is wrong as of now as I sit here before the subcommittee.

And if I look at wait times, I'm going to see an average of about 10 minutes at the peak times of the 40 busiest airports yesterday. And so I'm not prepared to tell you at this point that that number is not correct.

When we do as an agency believe that it's not correct, we will tell you. Because we understand and concur with that the previous panel said, that very crowded airport lobbies are a security threat. We recognize that, and we want to keep those lines down and move people through.

We get a little frustrated at TSA sometimes because no one seems to focus on the line at the airport check-in counter to get your boarding pass. And that's a little frustrating to us because we think those wait times can be longer than what the security wait time is.

As to EDS equipment, we are open to creative ideas as to how to get that job done. Leasing and savings that gets turned back to the airport over some committed period of time are options that, from a matter of policy, we're trying to develop so we can have a robust debate and come before this subcommittee and present those.

As to TWIC, we are in the prototype phase and we have a number of important policy decisions that we need to make. Which is, how will we administer the TWIC program going forward? Will we do that through a contractor that is

fielded by the federal government to manage and run that program, or will we set the standards and let the private sector produce TWIC cards, if cards are indeed involved, on a location-by-location basis?

So we have the knowledge from our piloting and our prototyping, and over the next several months we need to definitize precisely where that program is going.

And I appreciate, in particular, your comments about the demands of securing America and how one might feel if it's on his or her watch and a bad thing happens. That is on our minds at the helm of TSA, I can assure you.

JACKSON LEE: Mr. Chairman, I thank you for your indulgence.

And I disagree with Mr. Blank on the 45,000, but I thank and respect his answer.

And I'd also, Mr. Chairman, suggest that we have -- and ranking member -- a hearing dealing with the ability of airlines to help invest in security matters. And maybe at this point of prosperity, or some form of prosperity, they might be willing to join in with this effort. But it is still I think the responsibility of the federal government.

I yield back, Mr. Chairman.

Thank you.

LUNGREN: I thank the gentlelady.

And I thank Mr. Blank and all the witnesses that appeared in our first panel for your valuable testimony, and all the members for their questions.

The members of the committee may have some additional questions for the witnesses, and we would ask you to respond to these in writing upon receipt. The hearing record will be held open for 10 days.

And without objection, the committee stands adjourned.

END

NOTES:

[????] - Indicates Speaker Unknown

[--] - Indicates could not make out what was being said.[off mike] - Indicates could not make out what was being said.

PERSON: DANIEL E LUNGREN (94%); LAMAR SMITH (57%); DON YOUNG (57%); JOHN LINDER (56%); MARK E SOUDER (56%); KATHERINE HARRIS (55%); STEVE PEARCE (55%); MIKE ROGERS (55%); BOBBY JINDAL (54%); CHRISTOPHER COX (54%); LORETTA SANCHEZ (54%); EDWARD J MARKEY (53%); PETER A DEFAZIO (52%); ZOE LOFGREN (52%); BILL PASCRELL (51%);

LOAD-DATE: August 1, 2005

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION
STATEMENT OF THOMAS BLANK
ACTING DEPUTY ADMINISTRATOR**

**SUBCOMMITTEE ON ECONOMIC SECURITY,
INFRASTRUCTURE PROTECTION, AND CYBERSECURITY
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

July 28, 2005

Good morning Chairman Lungren, Congresswoman Sanchez, and Members of the Subcommittee. I am pleased to have this opportunity to appear before you today on behalf of the Transportation Security Administration (TSA) to report on the performance and management of our Nation's aviation screeners. Passenger and baggage screening is an essential component of TSA's layered approach to aviation security. The tools, training, and technology that the TSA provides to our screening workforce are the keys to our continued success in deterring potential terrorist threats and maintaining the security of our civil aviation system. Since the tragic attacks occurred earlier this month in London, the public is obviously focused on the security of our rail and bus systems. However, the Nation's aviation system is still a significant target and we must continue to be vigilant. Screening passengers and their property in a manner that ensures security and operational efficiency requires TSA to maximize all available resources, including personnel, technology, and partnerships with the private sector. We are constantly seeking new ways to meet the challenge of staying well ahead of those who attempt to foil our security measures by using all of our resources to the fullest extent.

Screener Training

TSA has initiated efforts to enhance screener training and we believe implementation of these efforts is essential to improving passenger and baggage screener training and performance. Such initiatives include reviews of our screener training programs, the development of the High Speed Operational Connectivity (HI-SOC) program, improving our Online Learning Center (OLC), and the development of internal controls that clearly define responsibilities for monitoring and documenting the completion of required training.

In order to become a certified screener, our screeners must complete a minimum of forty hours of classroom training, sixty hours of on-the-job training, and successfully complete all written and practical exams. TSA also requires recurrent screener training for certified screeners in order to maintain and refresh their skills, to learn changes in standard operating procedures, and to complete any necessary remedial training. A standard of three hours of duty time per week per screener is used by Federal Security Directors (FSD) to allow screeners to accomplish recurrent training. In addition to

training requirements, all screeners must meet annual recertification standards, passing a Standard Operating Procedures Job Knowledge Test, an X-ray Image Interpretation Test, and a Practical Skills Demonstration, as well as achieve 'met or exceeded' expectations on their performance assessment. The screener recertification program for 2004-2005 began on September 20, 2004, and recently concluded on June 30, 2005. During this period, approximately 39,000 Federal and contract screeners were recertified and the national pass rate was 98.7%.

The Office of Workforce Performance and Training (WPT) is currently reviewing the new hire screener training program in order to structure the program so it is a stable, repeatable process, and reduces costs while maintaining the high quality of the training. The new hire training program meets the basic screener training needs of major airports, but has the flexibility to cater to the operational requirements of Category III and Category IV airports. This new approach will allow for a screener to be operational in less time than the current new hire training cycle. The phased approach model is based on the premise that the new screener should be trained in skills that are critical for the screener to achieve an independent operational role. However, the training should be structured to build on previous phases and allow the screener enough time to gain knowledge and practice in the lab and on the job to master the basic screening skills.

TSA also conducted a one-week Recurrent Training Workshop to evaluate the current status of the Recurrent Screener training program. As a result of this workshop, TSA's web-based training courses will be updated to include new topics, such as breach recognition and prevention, breach response, and situational awareness. Several existing courses will also be updated or modified to meet our current training needs. Revisions to training requirements for screeners returning to duty after prolonged absences (thirty days or more) were also recommended to provide screeners with ample opportunities to refresh screening skills after long periods away from duty. Another positive result from the workshop is the development of an annual training plan template that clearly delineates recurrent training guidelines into refresher training and skills currency training.

TSA is also partnering with one of our private sector screening pilot "PP5" airports to adapt their On Screen Alarm Resolution Protocol Recurrent Training Materials into a training package that can be deployed nationwide to all screeners. This protocol allows screeners to evaluate items causing an alarm and potentially clear those items without subjecting the bag to a secondary screening process. This method has proven to be an effective, sound, and safe process. As of July 15, 2005, TSA has trained 8,689 screeners using this protocol with a passing rate of 97.3%. We foresee meeting TSA's goal to introduce this method to all airports with explosives detection systems (EDS) early in FY 2006.

From the standpoint of training delivery, one of our most significant accomplishments is the TSA OLC. This system is available to screeners through the TSA intranet or a secure site on the World Wide Web. This system makes available over 350 general training and development courses in addition to TSA-specific training. Upgrades to the OLC were implemented in early April 2005 resulting in improved reporting tools which allow TSA

to create tailored reports that training coordinators and Headquarters program managers can run on demand. New report products can be developed and implemented quickly when new requirements are identified. These report products will reflect a broad range of TSA training programs— Screener Training Exercises and Assessments (STEA) local testing, three hour recurrent training, mandatory employee training status and screener basic/on-the-job training status. This summer, we are also planning to expand the Performance Management Information System (PMIS) to include select OLC training summary data. This data will be available to managers and will include the ability to correlate training performance data with other TSA source data for cause and effect and trending analyses.

All training accomplishments must be documented in the OLC. A management directive mandates use of the OLC for documenting training records. This directive was revised in July 2005 to strengthen and clarify training recordkeeping requirements. TSA management routinely monitors national compliance with mandatory training requirements and recurrent training guidelines. Local FSDs are responsible for ensuring compliance on an individual basis. In March 2005, TSA Executive Leadership sent out a memorandum to advise all Assistant Administrators and FSDs that managers and supervisors will be held accountable for subordinates' completion of all mandatory training requirements. This accountability will be inserted into the performance plans of all TSA supervisors for FY 2006.

In order to ensure that all screeners have access to training available in the OLC and to provide TSA management with documentation of screener training, TSA has developed a plan to facilitate connectivity to all TSA airport training facilities. The HI-SOC program is a detailed plan and corresponding schedule for ensuring that training centers in airports receive high speed connectivity. The HI-SOC program includes a detailed plan for Wide Area Network (WAN) connectivity to TSA Airports including local area networking (LAN) to link operations centers, training centers and break rooms, baggage screening areas and checkpoints/passenger screening areas, and FSDs. The WAN will also facilitate XP migration, email migration, remote access to these systems via a Virtual Private Network (VPN) and facilitate intelligent phone deployment.

Screener Performance

Utilizing three primary performance measures, TSA has developed several baselines for screener performance. These performance measures are common to screeners at all airports with Federal screeners as well as at the five airports currently in the Screening Partnership Program (SPP)¹¹. Those same criteria would be applied as well to any airports that are currently federalized, but which may choose to participate in the privatized screening program in the future under the SPP. The privatized airports may also design

¹¹ The five airports currently using private screeners are San Francisco International Airport, Kansas City International Airport, Greater Rochester International Airport, Jackson Hole Airport, and Tupelo Regional Airport.

performance measures other than those in common with the federalized airports in order to measure specific areas of contractor performance or other areas deemed of interest. Airports that enroll in the SPP will be required by their contractual arrangements to ensure that their screener performance meets or exceeds that in place for the federalized airports through measurement of performance.

TSA measures screener performance by utilizing the following indicators:

- Percentage of screeners scoring above the national average on Threat Image Projection (TIP);
- Percentage of screeners scoring 85% or better on their annual performance recertification examinations on their first attempt, and;
- Results of screeners' annual performance reviews.

Threat Image Projection (TIP) is a program whereby false images of weapons and other deadly and dangerous prohibited items are displayed on the X-ray screens of screening equipment. The screener is tested on the percentages that are correctly identified. TIP is currently active on over 1,800 TIP Ready X-ray (TRX) machines at all passenger screening locations nationwide. TIP serves as an invaluable, multifunctional system that extends well beyond an evaluation tool. It provides immediate feedback and functions as a reinforcement system that increases screener accuracy. TIP enhances screener attentiveness and vigilance through random and periodic presentations and exposure to new and emerging threats that they may not normally see during the routine course of passenger screening. TIP results, which have been collected and analyzed on a monthly basis since January 2004, have shown a steady increase in screener performance on threat detection.

Another important measure of screener effectiveness is evaluating the percent of screeners scoring 85% or better on their first attempt of their annual re-certification examination. TSA considers the first attempt score a more accurate representation of the "current operating proficiency" of the screener before any targeted remediation is provided to the screener. In conjunction with screeners' annual performance reviews, these performance measures provide an assessment of screener performance at both federalized and the privatized airports.

Screening Performance

In addition to the screener performance measures, TSA has developed screening performance measures at the national level. To measure screening performance, TSA developed the Baggage Screening Program Index and the Passenger Screening Program Index. Each is a composite index that tracks overall screening program performance in the areas of security screening and customer satisfaction. TSA's screening programs and can be tracked periodically to assess progress.

The tools used to measure effectiveness or probability of detection for screeners and machines include TIP results, covert test results, Screener Training Exercises and

Assessments (STEA) test results and screening machine performance data. The TSA Office of Internal Affairs and Program Review (OIAPR) conducts covert tests to assess the effectiveness of aviation, maritime, and land security by using special techniques to replicate current terrorist threats in order to improve the safety and security of transportation modes. OIAPR airport covert testing protocols include penetrating passenger security screening checkpoints without detection with prohibited handguns (inoperable) and inert explosives, penetrating access control points in sterile and non-sterile areas, and hiding inert explosive devices in checked baggage. OIAPR covert tests provide instantaneous feedback to the screeners, their supervisors, and TSA management to improve existing airport security.

OIAPR produces classified monthly reports for senior TSA management that are designed to identify vulnerabilities in transportation systems, including equipment, policy, and personnel. Information reported by OIAPR allows TSA officials to develop system-wide strategies to improve airport security. TSA has made changes to policies, training, and equipment based on recommendations specified in monthly OIAPR reports. For example, TSA initiated "Step Forward" procedures for wanding individuals wearing long garments at passenger screening checkpoints. As of June 2005, OIAPR has tested 535 airports (93 airports have been tested multiple times). OIAPR commenced covert testing in September 2002 and, to date, has conducted 3,464 checkpoint tests, 757 checked baggage tests, and 13,056 access tests. OIAPR will complete a three-year covert testing cycle at all airports nationwide at the end of FY 05.

Screening Training Exercises and Assessments are utilized at the local level by the FSDs having individuals unknown to the screeners attempt to pass prohibited items through the checkpoints and in baggage. TSA uses screening machine performance data to determine the probabilities of detection. The probability of detection by both screeners and machines for passenger and baggage screening is classified and I would be happy to present this data in a secure forum.

Another important area of performance measurement is customer satisfaction. Customer satisfaction performance measure information is obtained through The Customer Satisfaction Index for Aviation (CSI-A). The annually computed index includes the results of a customer intercept survey, the results from a national survey completed by the Bureau of Transportation Statistics (BTS) at the Department of Transportation, and the trend in complaints and compliments that TSA receives through its contact center and at the airports. Additionally, TSA has developed packages for airport-initiated customer surveys. These allow individual airports to measure customer satisfaction by selecting questions from an approved list; those that they feel would provide important customer feedback. For Fiscal Years 2004/2005, the overall CSI-A is 78% on a scale of 100%.

TSA continually strives to develop and provide the best technology, training and operational procedures to our screeners to allow them to accomplish their screening mission in an effective and efficient manner. We have designed a program that focuses specifically on human factors and the steps we can take to continue to improve screener performance. In July 2003, TSA completed a comprehensive Passenger Screening

Performance Improvement Study which focused on human factors and utilized principles of Human Performance Technology. Through this process, TSA evaluated the nature of the screening work tasks, the screening workplace environment, and screener performance. This study identified potential systemic root causes that may contribute to poor performance and recommended solutions. As a result of the 2003 study, TSA initiated numerous other human factors engineering studies to address screener performance deficiencies. This wide range of human factors studies is helping us identify solutions that may be implemented through training, procedures, or technologies designed in certain manners.

Another factor that often affects screener performance is injury. TSA is making every effort to identify, mitigate, or eliminate factors that may be contributing to screeners' on-the-job injury rate. We have also implemented a Nurse Intervention Case Management Pilot Program at thirty-nine airports in November 2004. During this pilot, a Certified Nurse Case Manager manages injury claims telephonically or in person with interviews and visits to employees, supervisors, and physicians' offices, ensuring that injured screeners receive the best medical care. The focus is on the first 45 days after injury to ensure that appropriate diagnosis and care are expedited, which ultimately facilitates the screener's return to work. Prior to the pilot program start-up, the average lost production day count was 45 days per injury. Since the pilot began, the average has dropped to 12 days, resulting in a cost savings of about \$261,692. During the first eight months of this pilot, the total cost avoidance is estimated to be \$5.5M. TSA plans to expand this program nationally soon.

In addition to this pilot program, TSA is working to address screener injury rates in many other ways. For example, we established a new cross-functional screener injury task force to identify possible solutions for reducing screener injury rates. At the airport level, TSA created Safety Action Teams (SAT), comprised of management and employees, to identify and facilitate the resolution of safety issues and problems locally. Training also plays an important role in injury prevention so we developed 12 training courses aimed at injury prevention. Technology also plays a key role in injury reduction. Since the installation of in-line baggage handling systems at certain airports, the injury and illness rates at those airports have declined. These initiatives are just a few of the many ways TSA is working to improve screener performance by reducing injury rates.

To meet our demanding staffing needs, TSA has identified elements within the staffing standard which comprise the Screener Allocation Model. This model includes the equipment fielded at all airports and associated screener allocations. There are a number of factors that can impact the size of the screener workforce, including wait times, detection technology, checkpoint configuration, airline load factors, and schedules. TSA has set out to develop a more robust and dynamic tool to better define aviation security staffing requirements at the Nation's airports. The Screening Allocation Model provides TSA with an objective measure for screener staffing levels at each airport. In the future, In the future, TSA will be able to use this model to objectively reapportion its authorized screener workforce of 45K FTE. A report to Congress containing the elements of the

Screening Allocation Model is currently under Departmental review for submission to Congress.

Checkpoint and Baggage Screening Technology

As TSA recently testified before this subcommittee on July 19, 2005, the TSA technology program is designed to provide optimal tools to our screeners. In support of screening checkpoint operations at airports throughout the country, TSA uses Enhanced Walk Through Metal Detectors (EWTMD), TIP-ready X-ray machines (TRX) and Explosive Trace Detection (ETD) units. To ensure that we continue to comply with the requirement to screen one hundred percent of checked baggage at all of the Nation's commercial airports, TSA uses ETD and EDS equipment. In-line EDS are currently deployed as a cost effective screening process at high volume airports.

TSA is also developing new technologies in support of passenger and baggage screening. We recently completed pilot projects for explosives detection trace portals and we are running an ongoing pilot project for explosives detection trace document scanners. Other significant technologies currently under evaluation include an automated EDS for carry-on baggage and a whole body imaging technology (x-ray backscatter) to improve the detection of explosives and prohibited items on people who walk through checkpoints. Another priority is the development of a technology solution to more effectively screen cast and prosthetic devices for weapons and prohibited items. TSA is also testing a newly certified EDS unit—the Reveal CT-80—that should provide TSA with an alternative to in-line systems for some airports.

As recommended in the General Accounting Office (GAO) December 2004 report titled "Aviation Security: Systematic Planning Needed to Optimize the Deployment of Checked Baggage Screening Systems," TSA is already in the process of developing a strategic plan to determine which airports would benefit from in-line screening solutions as well as those that would benefit from replacing ETDs with EDS equipment. Additionally, TSA continually reviews and, as needed, refines the protocols and training of all screening procedures to include primary ETD screening for checked baggage.

TSA believes that increasing automated detection increases security capabilities, potentially minimizing personnel costs and staffing requirements, while increasing throughput capacity. Our efforts will focus on increasing our technological capabilities to keep pace with potential terrorists, whom we must assume are constantly examining how they can penetrate security at our Nation's airports.

Private sector partnerships

Another important resource we rely upon to accomplish our screening mission are public-private partnerships. TSA is currently operating several programs that leverage resources offered by the private sector, including the SPP and the private sector screening pilot

known as PP5². The SPP is a leading example of how TSA is partnering with the private sector to accomplish our screening mission and meet this important Congressional mandate. As required by the Aviation and Transportation Security Act (ATSA), TSA established the SPP to permit airports to apply to use private, rather than Federal, passenger and baggage screeners beginning on November 19, 2004. As ATSA requires, these private screeners must meet all requirements and qualifications applicable to Federal screeners concerning hiring and training, pay and benefits for private screeners must not be lower than Federal screeners, private screeners must be overseen by Federal Government supervisors, and screening services must be equal to or greater than the level provided by Federal screeners. TSA regards security as non-negotiable and will remain faithful to its core mission by ensuring that participants in SPP comply not only with the specific terms of ATSA but also other applicable statutory and other Federally-mandated requirements that affect aviation security.

TSA established the SPP Office to provide financial oversight, ongoing operational support, communications, and transition planning for airports that apply to participate in the program. To date, the agency has received seven applications for the program, including two applications from the Elko Regional Airport in Elko, Nevada and Sioux Falls Regional Airport in Sioux Falls, South Dakota. In addition, the five PP5 Pilot airports have submitted their applications to move into the SPP.

In establishing the SPP, TSA has sought to create a true partnership that leverages the strengths of the private and public sectors in order to fully capture the best of both worlds and work together toward our common objective—to ensure the security of the Nation’s aviation security in a cost-effective and customer-oriented manner.

TSA has made great strides to provide the best training, equipment, and technology to all of our Nation’s aviation screeners. In order to continue this progress and meet the challenge of staying ahead of those who pose a threat to our aviation system, TSA will continue to maximize all available resources—personnel, technology and partnerships with the private sector—in order to accomplish our mission of ensuring the security of the Nation’s aviation system.

Chairman Lungren, Congresswoman Sanchez, and other distinguished Members of the Subcommittee, this concludes my prepared remarks. I would be pleased to answer any questions at this time.

² This program was also established by ATSA (P.L. 107-71) and comprises the following five airports: San Francisco International Airport, Kansas City International Airport, Greater Rochester International Airport, Jackson Hole Airport, and Tupelo Regional Airport.



United States Department of Transportation
TRANSPORTATION SECURITY ADMINISTRATION

400 Seventh Street, S.W.
Washington, D.C. 20590

January 9, 2003

Barbara S. Liggett
Acting Regional Director
Washington Regional Office
Federal Labor Relations Authority
Tech World Plaza North
800 K. Street, NW, Suite 910
Washington, DC 20001-8000

Re: Transportation Security Administration and AFGE
Case No. WA-RP-03-0023

Dear Ms. Liggett:

The following information is provided in response to your letter of November 19, 2002, and the petition filed by the American Federation of Government Employees ("AFGE") to determine if AFGE should be recognized as the exclusive representative of the security screeners employed by the Transportation Security Administration ("TSA") at Baltimore-Washington International Airport ("BWI").¹

SUMMARY OF RESPONSE

Congress created TSA when it passed the Aviation and Transportation Security Act ("ATSA") in the wake of the terrorist attacks on September 11, 2001. Public Law No 107-71, 49 U.S.C. § 44935 Note (2001). A key provision of this act created a federal workforce to perform security screening at the nation's commercial airports. In ATSA, Congress also granted to TSA exclusive personnel authority over airport security screeners, empowering the Under Secretary of Transportation for Security to "employ, appoint, discipline, terminate, and fix the compensation, terms, and conditions of employment" for screeners "*[n]otwithstanding any other provision of law.*" ATSA § 111(d) (emphasis added). Based on long-standing Federal Labor Relations Authority (the "Authority") and Circuit Courts of Appeals case law, such exclusive personnel authority precludes mandatory collective bargaining over the terms and conditions of security screener employment. The Under Secretary of Transportation for Security has exercised his personnel authority and determined that TSA cannot engage in any collective bargaining over the terms and conditions of employment for security screeners consistent with national security requirements and considerations. Because the purpose of AFGE's petition is to elect an exclusive representative "for collective bargaining," the Authority is without jurisdiction to act

¹ AFGE filed a similar petition regarding the TSA screeners at LaGuardia airport. That petition is pending with the Boston Regional Director. We have sent a separate letter to the General Counsel requesting consolidation of these two petitions and any other petitions filed by AFGE to organize TSA screeners.

on this petition or to conduct any subsequent election of an exclusive representative for the purpose of collective bargaining.

Moreover, even if the Authority had jurisdiction over the petition despite Congress's grant of exclusive personnel authority to TSA, airport security screeners are excluded from such a unit under 5 U.S.C. § 7112(b)(6) because they are engaged in "security work which directly affects national security." Finally, even if the petition were deemed appropriate and security screeners could be included in a unit, a nationwide unit is the only appropriate unit because a unit comprised of only BWI screeners (or any other single airport) would not ensure a clear and identifiable community of interest among the employees in the unit, nor would it promote effective dealings with TSA or promote the efficiency of TSA's operations.

INFORMATION PROVIDED

The following is provided in response to your specific requests in paragraph two of your November 19, 2002 letter:

a. *Confirmation that the agency employs any employees affected by issues raised in the petition:* Issues raised by AFGE's petition affect TSA employees. Enclosed at Tab 1 is a current list of employees who currently are employed at BWI airport as airport security screeners, including passenger screeners, baggage screeners, and lead screeners. Based on the issues raised and the arguments presented below, it is TSA's position that all of these employees are excluded from the unit.²

b. *Statement of interest in the issues raised by the petition, including appropriateness of the unit sought:* We request that the following issues be considered in this matter. These issues are discussed in detail below.

1) Whether the Authority lacks jurisdiction to act on this petition to elect an exclusive representative "for the purpose of collective bargaining" under 5 U.S.C. § 7111 (b)(1)(A) because Congress granted exclusive personnel authority to TSA, exempting TSA from the requirement to bargain collectively over conditions of employment with TSA security screeners.

2) Assuming, arguendo, that the Authority has jurisdiction, whether a unit composed of security screeners is inappropriate under 5 U.S.C. § 7112(b)(6) because the screeners are engaged in security work which directly affects national security.

3) Assuming the Authority determines that the petition is appropriate and that airport security screeners are not engaged in security work which directly affects national security, whether a nationwide unit of security screeners (versus a unit of security screeners at an individual airport such as BWI) is the only appropriate unit because a unit of screeners at a single

² AFGE's petition includes "all employees, including passenger screeners, baggage screeners and lead screeners, of the Transportation Security Administration, Baltimore-Washington International Airport." In discussions with the undersigned, AFGE National Organizer Peter Winch agreed that although there are non-screener TSA employees posted to BWI, only security screeners are covered by this petition.

airport would not ensure a clear and identifiable community of interest among the employees, nor would it promote effective dealings with TSA or promote the efficiency of TSA's operations.

c. *Copies of all relevant documentation concerning issues raised by the petition:* relevant documents are indexed and enclosed with this response.

d. *Names, mailing addresses and telephone numbers of all labor organizations, agencies or activities known to be affected by the issues raised in the petition:* None.

DISCUSSION OF ISSUES RAISED BY THE PETITION

Background – Airport Security Screeners

On November 19, 2001, following the terrorist attacks of September 11, Congress passed the Aviation and Transportation Security Act ("ATSA"), Public Law No 107-71, 49 U.S.C. § 44935 Note (2001). ATSA created TSA to protect the nation's transportation systems, including the civil aviation system. A key provision of ATSA created a federal workforce to screen passengers and cargo at commercial airports. Since its inception, TSA has federalized the passenger security screening function at over 400 commercial airports in the United States and certain of its territories and hired more than of 40,000 screeners. BWI was the first airport in the United States to have the passenger security screening function federalized. In creating this federal work force, Congress recognized 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.*" H.R. Conf. Rep. No. 107-296 at 54 (2001) (emphasis added).

Congress specified criteria by which TSA must determine the qualifications of individuals to be hired as security screening personnel. These qualifications require applicants: to pass a security screening selection examination; to be citizens of the United States; to have a high school or general equivalency diploma or prior experience in a similar capacity; to demonstrate proficiency in reading, writing, and speaking English; and to possess basic aptitudes and physical abilities, including color perception, visual and aural acuity, physical coordination, and motor skills. Additionally, Congress directed that applicants must pass a background check and that no individual who presents a threat to national security be employed as a security screener. See 49 U.S.C. § 44935(e)(f).

To meet these statutory requirements, TSA, through one nationwide contractor rather than local management, selected all security screeners pursuant to centralized direction and uniform assessment tools and procedures. Those who accepted TSA's offer of employment were appointed and employed by TSA pursuant to the authority found in ATSA § 111(d), which has been codified at 49 U.S.C. § 44935 Note. This section provides:

SCREENER PERSONNEL- *Notwithstanding any other provision of 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 functions 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.

49 U.S.C. § 44935 Note (emphasis added).

ATSA also includes many specific provisions pertaining to the attributes of the security screener position ranging from training requirements, performance management and daily fitness for duty. See 49 U.S.C. §§ 44935(e)(2)(A)(v) and (f)(5). The means and methods of implementing all of these statutory provisions are devised centrally. For example, the initial 40 hours of classroom instruction required under the statute was developed in TSA's Office of Training and Quality Performance. Two TSA contractors conducted the training of passenger and baggage screeners throughout the country using uniform training curricula. Similarly, the fitness for duty requirements are defined at headquarters as well as the method and frequency with which management must assess screeners' fitness.

During the hiring and federalization process, TSA used a mobile screening force ("MSF"). The MSF consisted of a pool of trained security screeners who were deployed throughout the nation to maintain the screening function at airports while new screeners assigned to each airport were hired and trained. The MSF also supervised the 60 hours of on-the-job training of new screeners required under ATSA. Over 2,900 security screeners have been part of the MSF, some for extended periods of time and at multiple airports. At present, a little over 900 are still deployed at airports other than their home base. It is likely that TSA will continue to use a MSF to maintain security when there are temporary staffing shortfalls at particular airports.

During training, security screeners are provided with sensitive security information ("SSI")³ about security screening technology and procedures. Additionally, security screeners are privy to the substance of security directives that are issued from time to time by the government that also contain SSI. This information must be carefully protected because, if widely disseminated, it could create vulnerability in the transportation system that could make it more likely for terrorists to succeed in an attack on the civil aviation system.

Security screeners carry out critical functions in providing maximum security to air travelers, airports and airplanes. The security screener serves an essential role in the Federal government's implementation of more stringent security guidelines in the aftermath of September 11, 2001. As Congress noted, "the terrorist hijacking and crashes of passenger aircraft on September 11, 2001, which converted civil aircraft into guided bombs for strikes against the United States, required a fundamental change in the way it approaches the task of

³ SSI includes information that has been obtained or developed during security activities or research and development activities. 49 C.F.R. § 1520.1. This information is protected from public disclosure under 49 U.S.C. § 40119 if it would: 1) constitute an unwarranted invasion of privacy; 2) reveal trade secrets or privileged or confidential information obtained from any person; or 3) be detrimental to the safety of persons traveling in transportation.

ensuring the safety and security of the civil air transportation system." H.R. Conf. Rep. No. 107-296 at 54 (2001) (emphasis added). TSA security screeners serve in a key national security capacity, providing frontline security by screening baggage, cargo and passengers. Screeners are responsible for identifying dangerous objects in baggage, cargo and on passengers and preventing those objects from being transported onto aircraft. They also use diverse, cutting edge electronic detection and imaging equipment.

Because the role of security screeners is central to TSA's national security mission of ensuring airport and aircraft security and thereby preventing acts of terrorism in the United States, virtually all decisions regarding the checkpoints, from the specifics of scheduling screeners to how they perform their job functions, implicate security directly or indirectly. Even job attributes which might be described as "customer service" rather than directly security related are critical to rendering security measures acceptable to the traveling public and making commercial air travel both secure and, ultimately, feasible. Accordingly, early in its development, TSA determined that because of its vital national security mission it was critical that screener employment policies and practices be established centrally for nationwide application. To that end, all universally applicable employment policies are established at TSA Headquarters in Washington, D.C.⁴ Similarly, all operational policies, such as screener staffing and the Standard Operating Procedures (SOP) for the security screening function, are established at Headquarters.

All of these policies, directives and SOPs are disseminated to TSA's offices nationwide through the Federal Security Directors ("FSDs") who are the highest-ranking TSA officials at the airports. Although FSDs have some degree of autonomy in the day-to-day operation of their airports, detailed national policies, directives, and SOPs significantly limit their discretion as to personnel matters. For example, although many airports have a human resource specialist on staff, adverse actions must be coordinated through the employee relations staff located in the Office of Human Resources Management at headquarters and must be based on uniform policies.

⁴ See attached TSA employment policies: HRM Letter 752-1, Interim Policy for Addressing Performance and Conduct Problems; HRM Letter 771-1, Interim Policy on Grievance Procedures; HRM Letter 430-01, Interim Policy on the Transportation Security Administration Performance System for Fiscal Year 2002; HRM Letter 300-2, Interim Policy on Probationary Periods; HRM Letter 735-2, Interim Policy on Interim Uniformed Employees Appearance and Responsibilities; HRM Letter 752-2, Interim Policy on Professional Review Board; HRM Letter 451-1, Interim Policy on Awards and Recognitions; and HRM Letter 1800-01, Interim Policy on Whistleblower Protections for Security Screeners.

DISCUSSION OF ISSUES RAISED BY THE PETITION

Issue 1: The Authority lacks jurisdiction to act on this petition to elect an exclusive representative "for the purpose of collective bargaining" under 5 U.S.C. § 7111 (b)(1)(A) because Congress granted exclusive personnel authority to TSA, exempting TSA from the requirement to bargain collectively over conditions of employment with TSA security screeners.

Exclusive Personnel Authority

As noted above, Congress granted to the Under Secretary of Transportation for Security ("Under Secretary") the authority to "employ, appoint, discipline, terminate, and fix the compensation, terms, and conditions of employment of Federal service" for airport security screening "*notwithstanding any other provision of law.*" 49 U.S.C. § 44935 Note (emphasis added). This is a grant of exclusive personnel authority that precludes the application of conflicting provisions in Title 5, including the general right of federal employees to engage in collective bargaining under the Federal Service Labor-Management Relations Statute ("FSLMRS"), 5 U.S.C. Chapter 71. See AFGE v. FLRA, 46 F.3d 73 (D.C. Cir. 1995) (Director of Office of Thrift Supervision ("OTS") not required to bargain over the compensation and benefits of OTS employees because the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 entrusted the Director with unrestricted discretion in setting employee compensation); Colorado Nurses Association v. FLRA, 851 F.2d 1486 (D.C. Cir. 1988) (Department of Veterans Affairs ("VA") not obligated to engage in collective bargaining over the conditions of employment for certain VA employees because Administrator granted unfettered discretion to determine such terms and conditions under Title 38); New Jersey Air National Guard v. FLRA, 677 F.2d 276 (3rd Cir. 1982) (National Guard Technicians Act of 1968 is an exception to FSLMRS and precludes bargaining over reductions-in-force, grievances, and adverse disciplinary action).

Colorado Nurses is a controlling precedent in resolving this issue. The Colorado Nurses Association represented a bargaining unit of the VA and brought six claims to the VA for negotiation. The VA refused to negotiate citing its personnel authority under Title 38. Section 4108 of Title 38 required the VA Administrator to prescribe by regulation the conditions of employment for certain medical employees, including nurses, "notwithstanding any law." 851 F.2d at 1488.

The D.C. Circuit Court of Appeals noted that this case required the court to determine the reach of two apparently conflicting statutes -- the VA's personnel authority under Title 38 and the collective bargaining for federal employees provided under the FSLMRS. The court used a two-step analysis. In the first step, it determined whether the two statutes actually conflicted. Once it found such a conflict, the court determined which statutory provisions prevailed. Id.

The court found that under Title 38, Congress intended to grant exclusive personnel authority to the VA Administrator and that "he is to be unhampered by the range of federal personnel statutes and regulations that might otherwise constrain his authority." Id. at 1489-90.

Thus, the provisions of the FSLMRS requiring collective bargaining conflicted with the Administrator's exclusive personnel authority. Upon finding a conflict, the court then applied the basic principle of statutory construction that a statute dealing with "a narrow, precise, and specific subject" is not superceded by a generalized provision, even if the general statute is enacted later. *Id.* at 1492 (citations omitted). Finding the VA's personnel system to be such a specific statute, the court held that it must prevail over the more general FSLMRS applicable to the Federal government. *Id.*

In response to AFGE's petition, the Authority must similarly hold that the congressional grant of authority to the Under Secretary in ATSA § 111(d) regarding security screeners is a grant of exclusive personnel authority. Under this grant, Congress intended the Under Secretary to be "unhampered by the range of federal personnel statutes and regulations that might otherwise constrain his authority" regarding airport security screeners, including the application of the FSLMRS. See *id.* at 1489-90. In fact, it is difficult to imagine a broader grant of personnel authority than that found in ATSA § 111(d). Congress gave the Under Secretary the authority to begin and end the employment relationship -- "employ, appoint, [and] terminate" -- as well as to determine the "conditions of employment of Federal service," including the "compensation" and the method used to "discipline" security screeners. *Id.* This is a very specific statute, limited in its application to only airport security screeners. This statute conflicts with the more general requirement in the FSLMRS for the federal government to engage in collective bargaining. *AFGE v. FLRA*, 46 F.3d at 77; *Colorado Nurses*, 851 F.2d at 1491; *New Jersey Air National Guard v. FLRA*, 677 F.2d at 286.

The mandate to engage in collective bargaining conflicts with TSA's national security responsibilities and the discretion over the terms and conditions granted to the Under Secretary by ATSA § 111(d). For example, because of a heightened or new security threat, TSA might need to quickly redesign the screening function which could result in reassignment of passenger screeners to baggage screening or changes in work procedures or schedules for screeners. Such changes could be perceived as having an adverse impact on employees. Although the change in work assignment is a right reserved to management under the FSLMRS, TSA would be required to notify the union of the changes and, at a minimum, discuss whether negotiation over impact and implementation is required. Because the limits of negotiability are often open to debate, a requirement to inform the union and parse whether negotiation is mandated would undermine TSA's ability to respond quickly, discretely, and efficiently to emerging security circumstances.⁵ Moreover, TSA could not discuss the basis of such changes with the union because that would require TSA to reveal sensitive security information or classified national security information.

If TSA refuses to negotiate over the implementation of such changes, the union could file an unfair labor practice with the Authority. The Authority could then order TSA to negotiate over certain matters under 5 U.S.C. § 7117(c). Moreover, it is entirely possible that after negotiating in good faith the parties will not reach an agreement through collective bargaining. At this point, the parties would be at impasse and the issue would either be submitted to the

⁵ This interference with national security is the reason why the FSLMRS (5 U.S.C. § 7103) provides authority to the President of the United States to exclude organizations from coverage under FSLMRS and employees engaged in security work directly affecting national security are not part of an appropriate bargaining unit under 5 U.S.C. § 7112. See Issue 2.

Federal Service Impasses Panel ("FSIP") or submitted to a binding arbitration proceeding approved by FSIP. 5 U.S.C. § 7119. While the matter is pending at FSIP, the parties must maintain the status quo, which would preclude the Under Secretary from changing policies and practices and therefore would limit severely his ability to exercise personnel authority over security screeners. Additionally, the FSIP is empowered to "take whatever action is necessary" to resolve an impasse, including imposing the mandatory terms of an agreement. 5 U.S.C. § 7119(c)(5)(B)(iii). Again, action by the FSIP, including rendering a binding decision under 5 U.S.C. § 7119(c)(5)(C), conflicts with the authority Congress intended the Under Secretary to exercise exclusively. AFGE v. FLRA, 930 F.2d at 1326 ("It is the compulsory nature of bargaining over working conditions, not any particular union proposal, which conflicts with Congress' express intent that the Secretary be allowed to act independently of all other laws, Executive orders, and regulations in establishing the hours and conditions of employment for [VA] professionals.").

Upon determining that these statutes conflict, the Authority must next conclude that the specific provisions in ATSA § 111(d) prevail. Congress intended this result when it explicitly stated that the Under Secretary acts "notwithstanding any other provision of law."

The use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section. . . . Likewise, the Courts of Appeals generally have 'interpreted similar 'notwithstanding' language . . . to supersede all other laws, stating that '[a] clearer statement is difficult to imagine.'

Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 (1993)(internal citations omitted).

The legislative history of ATSA also demonstrates that Congress intended to grant exclusive authority to the Under Secretary in personnel matters related to security screeners. The House Conference report noted that "the participants in this Federal security workforce . . . can be fired *at the discretion* of the Secretary if they are not able to adequately perform their duties." Additionally, the report noted 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." H.R. Conf. Rep. No. 107-296 at 64 (2001) (emphasis added). Moreover, several members of Congress expressed their specific concern that it should not be difficult or impossible to efficiently remove screeners who were not performing properly. 147 Cong. Rec. H7841-42 (Nov. 6, 2001) (statement of Rep. Tancredo), *id.*, H7635 (Nov. 1, 2001) (statement of Rep. Duncan).

In summary, the grant of personnel authority given to the Under Secretary under ATSA § 111(d) is exclusive and precludes the *mandate* of collective bargaining under FSLMRS. Moreover, the Under Secretary has determined that any form of collective bargaining over the terms and conditions of security screener employment would be inconsistent with the national security requirements and conditions. Thus, the Under Secretary has exercised the authority provided by ATSA § 111(d) to prohibit any form of collective bargaining, including voluntary bargaining, over the terms and conditions of security screener employment. See attached Determination of the Under Secretary.

Although the Authority has found jurisdiction over unfair labor practice allegations regarding VA employees in several cases, these cases are distinguishable. See Department of Veterans Affairs, Veterans Administration Medical Center, San Francisco, California, 40 FLRA 290 (1991)(Authority had jurisdiction to adjudicate unfair labor practice alleged under § 7116(a)(1)); Department of Veterans Affairs Washington, D.C., 46 FLRA 805 (Authority had limited jurisdiction to adjudicate complaints alleging unlawful interference with rights to form, join, or assist a labor organization under § 7116(a)(1)); Department of Veterans Affairs, Veterans Affairs Medical Center Hampton, Virginia, 53 FLRA 298 (1997)(Authority had jurisdiction to determine whether the Agency violated § 7116(a)(1) and (8) by refusing to grant official time for a union representative to appear at an unfair labor practice hearing). In each of these cases, the Authority was not acting pursuant to any powers over an election under § 7111, but was instead acting pursuant to its powers under § 7118 to adjudicate complaints alleging unfair labor practices under § 7116.

Moreover, the union asserting the unfair labor practice in these cases had already been recognized as the exclusive representative of the employees prior to the 1980 amendment to Title 38, which firmly established the VA's exclusive personnel authority. See AFGE v. FLRA, 930 F.2d at 1327. In AFGE v. FLRA, the Eight Circuit Court of Appeals held that the exclusive personnel authority granted to the VA did not preclude *voluntary bargaining* over the terms and conditions of employment. Id. at 1328. The matter before the Authority here differs because the Under Secretary has prohibited any form of collective bargaining, including voluntary bargaining, with a labor organization.

Based on the foregoing, the Authority lacks jurisdiction to act on this matter under 5 U.S.C. § 7111 because Congress granted exclusive personnel authority in ATSA § 111(d) to TSA. This exclusive personnel authority precludes mandatory collective bargaining, and the Under Secretary has prohibited any form of voluntary collective bargaining by security screeners because it is incompatible with national security requirements and considerations.

Issue 2: Even if the Authority determines that it has jurisdiction over this petition despite TSA's exclusive personnel authority over screeners, a unit composed of security screeners is inappropriate under 5 U.S.C. § 7112(b)(6) because the screeners are engaged in security work which directly affects national security.

A labor organization may not be certified as the exclusive representative of employees in a bargaining unit under 5 U.S.C. § 7111 if the unit is not appropriate. Section 7112(b)(6) provides that a unit is not appropriate if it includes "any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security." In determining whether employees are engaged in security work which directly affects national security, the Authority has included:

those sensitive activities of the government that are directly related to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the Government in domestic and foreign affairs, against or from espionage, sabotage, subversion, foreign aggression, and any other illegal acts which adversely affect the national defense.

Department of Energy, Oak Ridge Operations, Oak Ridge, Tenn., 4 FLRA 644, 655-56 (1980).

Without question, airport security screeners employed by TSA are engaged in "sensitive activities of the government" and their work is indisputably related to the preservation of the United States. Therefore, the unit proposed by AFGE in this petition is not appropriate.

Security Work

The Authority has defined "security work" broadly to include "a task, duty, function, or activity related to securing, guarding, protecting, or preserving something." Department of Justice (DOJ), 52 FLRA 1093, *18 (1997) (employees within various sections of the Criminal Division of the Department of Justice are involved in security work which directly affects national security). The Authority recognized that this broad definition might exclude large groups or entire subdivisions of employees. DOJ, 52 FLRA at *17. Under this definition, security work includes "the design, analysis, or monitoring of security systems and procedures." Id. See also U.S. Department of the Army, Corps of Engineers, U.S. Army Engineer Research Development Center, Vicksburg, Mississippi, 57 FLRA 180, *8-*9 (2002) (employees of the Engineer Research Development Center who provide knowledge of the battlefield through expertise in topographic and related science are engaged in security work); Oak Ridge, Tenn., 4 FLRA at 655 (personnel security specialist, industrial and physical security specialist, and secretary in the physical safeguards branch are engaged in security work). Additionally, "security work" includes a position that requires regular use or access to classified documents. DOJ, 52 FLRA at *20. However, "the Authority did not condition the definition of security work on any minimum amount of time for exposure to or access to classified material." Corps of Engineers, 57 FLRA at *10.

The work of airport security screeners constitutes "security work" because screeners are involved in securing, guarding, protecting and preserving the nation's commercial aviation system, and, as the terrorist attacks of September 11, 2001, so palpably demonstrated, the United States.

Airport security screeners monitor and analyze security systems and procedures for passengers and cargo in commercial aviation. The security screeners use and monitor walk-through and hand-held metal detectors to screen passengers prior to their travel. Additionally, they use x-ray systems and in some instances explosive trace detection ("ETD") equipment to screen hand-carried luggage before it is allowed on aircraft. The security screeners are responsible for identifying dangerous objects -- such as guns, knives and box cutters -- and ensuring that these objects are not transported on aircraft. Security screeners also screen checked baggage to ensure that explosives are not transported on aircraft. In completing this screening, the security screeners use a variety of means, including explosive detection systems ("EDS"), ETD equipment, physical searches and, in some instances, screening by dogs trained to detect explosives.

The screening of passengers and cargo is critical to ensure the security of our civil aviation transportation system from terrorists. While carrying out this screening function, security screeners use sensitive security information ("SSI") about security screening technology and procedures. The security screeners are also privy to the substance of federal security directives designed to protect the nation's commercial aviation system. This information must be carefully protected because, if widely disseminated, it could create a systemic vulnerability of the transportation system that could make it more likely for terrorists to succeed in an attack.

National Security

The security work completed by airport security screeners directly affects national security. In passing ATSA, Congress made a specific finding that the protection of the United States' air transportation system was necessary for national security. It stated:

[T]he 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*. . . .

[T]he terrorist hijacking and crashes of passenger aircraft on September 11, 2001, which converted civil aircraft into guided bombs for strikes against the United States, required a fundamental change in the way it approaches the task of ensuring the safety and security of the civil air transportation system. . . .

[S]ecurity functions at United States airports should become a Federal government responsibility. . . .

H.R. Conf. Rep. No. 107-296 at 54 (2001) (emphasis added).

The Authority's Regional Director for the Washington Region reviewed a similar issue regarding Civil Aviation Security ("CAS") in late September 2001. In a petition to organize Federal Aviation Administration ("FAA") personnel, the former Regional Director concluded that the CAS function is a matter of national security. U.S. Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association, Case No. WA-RP-90116, p 34. This same CAS function was transferred to TSA in February 2002. See 67 Fed. Reg. 84340, February 22, 2002 (Final rule transferring the functions of the CAS from FAA to TSA). In reaching this conclusion, the Regional Director took official notice of the events of September 11, 2001, and the legislation promulgated in response to those events. *Id.* at n. 18.

In the FAA petition, the Regional Director cited a number of factors in reaching this conclusion that the security of civil aviation is a matter of national security. First, he stated that the hijacking of four aircraft on September 11 "had an immediate impact on the economy of the United States." *Id.* at 33. Second, he noted that the U.S. Congress "appropriated tens of billions of dollars for military and other action to protect the nation against further attacks by those responsible for the events of September 11." *Id.* at 34. Third, he found that "Congress and the President view[ed] the attacks on the World Trade Towers and the Pentagon as acts of foreign aggression designed, at least in part, to cower the United States into altering or reducing its role

in foreign affairs.” *Id.* Fourth, he acknowledged that CAS personnel promulgated regulations and directives to “promote the security of civil aviation, including the prevention of acts of air piracy, aviation sabotage, and related criminal acts.” *Id.* (citation omitted). Finally, the Regional Director found that the hijackings and subsequent use of hijacked aircraft on September 11 were acts of air piracy and criminal acts. *Id.*

All of these factors are equally applicable in determining whether the security work performed by airport security screeners affects national security. The work performed by the security screeners directly contributes to the security of United States’ civil aviation and the prevention of hijackings and terrorism. As recognized by Congress, this work is “critical to the security of the United States and its national defense.” H.R. Conf. Rep. No. 107-296 at 54 (2001). Therefore, the security screeners must be excluded from any bargaining unit under 5 U.S.C. § 7112 (b)(6). Therefore, because the focus of this petition is security screeners, the petition must be dismissed without further action.

Issue 3: Assuming the Authority determines that the petition is appropriate and that airport security screeners are not engaged in national security, a nationwide unit of security screeners (versus a unit of security screeners at an individual airport such as BWI) is the only appropriate unit because a unit of screeners at a single airport would not ensure a clear and identifiable community of interest among the employees, nor would it promote effective dealings with TSA or promote efficiency of TSA’s operations.

The proposed unit, “[a]ll employees, including passenger screeners, baggage screeners and lead screeners, of the Transportation Security Administration, Baltimore-Washington Airport,” is not appropriate under § 7112(a) of the FSLMRS. Only a nationwide unit of Agency screeners would satisfy the criteria for an appropriate unit established by the FSLMRS and the Authority.

The determination of an “appropriate unit” under the FSLMRS is made by assessing if the proposed unit will: “(1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the agency involved; and (3) promote efficiency of the operations of the agency involved.” U.S. Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio, 55 FLRA 359, 361-62 (1999); 5 U.S.C. § 7112(a).

Community of Interest

TSA is charged with protecting the United States from terrorist attacks by protecting the Nation’s transportation systems, specifically including civil aviation, and thus ensuring freedom of movement for people and commerce while providing top quality service to travelers. All TSA security screeners support exactly the same mission and share identical duties, job titles and work assignments. TSA screeners nationwide are subject to the same general working conditions and are governed by the same operational and personnel policies administered by the headquarters office in Washington, D.C. Additionally, the screeners receive the same training and must maintain the same level of proficiency, their positions are advertised nationally, and

there is interchange and transfer of personnel among the various airports. See U.S. Securities and Exchange Commission, Washington, D.C. and National Treasury Employees Union, 56 FLRA 312, 315 (2000) ("SEC and NTEU") and Department of Transportation, Federal Aviation Administration, New England Region and American Federation of Government Employees, 1985 FLRA Lexis 132 (1985) ("FAA and AFGE") (describing factors to consider when determining whether employees share a clear and identifiable community of interest).

TSA additionally uses a mobile screening force ("MSF") -- a pool of trained employees who can, and are, deployed throughout the nation to maintain airports' operations while local screeners are not available. TSA originally hired 2,000 permanent MSFs and later added 400 other MSFs who were called upon when needed. This MSF could be reassigned rapidly in response to changing security conditions. TSA could not effectively deploy these MSFs to different airports if there are separate units throughout the country with possibly different conditions of employment.

The proposed unit of screeners simply does not have a clear and identifiable community of interests "separate and distinct from other employees" at the other airports nationwide. See Department of the Interior, National Park Service, Lake Mead National Recreation Area, Boulder City, Nevada and Fraternal Order of Police, 57 FLRA 582 (2001) ("NPS"); FAA and AFGE, 1985 FLRA Lexis 132 * 11; Department of the Navy, Navy Publications and Printing Service Branch Office, Vallejo, California and International Federation of Professional and Technical Engineers, 10 FLRA 659 (1982) (finding there was not a clear and identifiable community of interest when the proposed unit was not "separate and distinct from other employees"). TSA employees at BWI do not have "significant employment concerns or personnel issues that are different or unique from those of other employees," and thus cannot constitute an appropriate unit. See NPS, 57 FLRA 582 at 584. Moreover, the same type of employees in the proposed unit is widely distributed throughout the Agency. These employees perform the exact same duties of all other employees at over 400 airports. See SEC and NTEU, 56 FLRA 312 at 315-16 (distinguishing Authority decisions finding no community of interest where the employees in the proposed units were not widely distributed throughout the agencies).

Effective Dealings

The proposed unit at BWI would not promote effective dealings with the Agency, but on the contrary would produce dealings that are more burdensome by fragmenting and proliferating the number of units. TSA employs screeners in more than 400 airports throughout the 48 contiguous states, Alaska, Hawaii and U.S. possessions. The employees at BWI are but a small fraction of the organizational component of TSA. If the proposed unit is found appropriate, TSA could potentially be required to deal with a large number of units and be forced to negotiate and administer multiple agreements. This result would go against Authority precedent holding that "reducing and preventing unit fragmentation tends to promote effective dealings." SEC and NTEU, 56 FLRA at 317 (upholding Regional Director's finding that a proposed nationwide unit was appropriate). And "[a]lthough Authority precedent does not set forth a 'preference' for any particular structure," there is a "long established principle that the application of the appropriate unit criteria properly results in 'broader, more comprehensive bargaining units.'" Id. at 314. The proposed unit at BWI airport, or any other single airport, would result in the "artificial

fragmentation of an integrated . . . component or subdivision of the Agency on the basis of geographical location alone." See Naval Sea Support Center, Atlantic Detachment and International Federation of Professional and Technical Engineers, 7 FLRA 626, 627 (1982) (finding that a proposed unit of one of several departments of a Naval Sea Support Center was not an appropriate unit).

Efficiency of Agency Operations

The proposed unit at BWI would affect the efficiency of Agency operations by increasing the cost related to the administration of bargaining relationships with multiple units around the country. See SEC and NTEU, 56 FLRA 312 at 317; U.S. Department of the Navy Fleet and Industrial Supply Center, Norfolk, Virginia and American Federation of Government Employees, 1997 FLRA Lexis 18 *31-32 (1997) (finding that the costs of negotiating separate collective bargaining agreements would be substantial); Mid-Continent Mapping Center, National Mapping Division, U.S. Geological Survey, Rolla, Missouri and National Federation of Federal Employees, 4 FLRA 426 (1980) (finding that a proposed local unit "would tend to result in the existence of numerous units which would, in turn, tend to result in increased expenditures related to the administration of the bargaining relationships").

Based on the foregoing, only a nationwide unit of Agency screeners would satisfy the criteria for an appropriate unit established by the FSLMRS and the Authority.

CONCLUSION

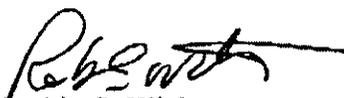
This petition must be dismissed for the following reasons.

1) The Authority lacks jurisdiction over this matter under 5 U.S.C. § 7111 because Congress granted the Under Secretary exclusive personnel authority over security screeners that supercedes the mandate to engage in collective bargaining under the FSLMRS. Moreover, the Under Secretary has exercised his personnel authority and determined that TSA cannot engage in any collective bargaining over the terms and conditions of employment for security screeners consistent with national security requirements and considerations.

2) Even if the Authority had jurisdiction, it is not appropriate to include security screeners in a unit under § 7112(b)(6) because they are engaged in security work which directly affects national security.

3) Even if the petition were deemed appropriate and security screeners could be included in a unit, a nationwide unit is the only appropriate unit because a unit comprised of only BWI screeners (or any other single airport) would not ensure a clear and identifiable community of interest among the employees in the unit, nor would it promote effective dealings with TSA or promote efficiency of TSA's operations.

Respectfully Submitted,



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