



CONGRESSIONAL TESTIMONY

STATEMENT BY

**J. DAVID COX, SR.
NATIONAL PRESIDENT
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

BEFORE

**HOUSE SUBCOMMITTEE ON TRANSPORTATION AND MARITIME SECURITY
HOUSE COMMITTEE ON HOMELAND SECURITY**

ON

THE TSA WORKFORCE CRISIS: A HOMELAND SECURITY RISK

MAY 21, 2019

Chairman Correa, Ranking, Member Lesko, Committee Chairman Thompson, and Members of the Homeland Security Committee, I am J. David Cox, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of over 700,000 federal workers represented by our union, including over 44,000 Transportation Security Officers (TSOs), I appreciate the opportunity to offer testimony at today's hearing before the Subcommittee on Transportation and Maritime Security of the Committee on Homeland Security, "The TSA Workforce Crisis: A Homeland Security Risk." The title of this hearing is accurate: the performance of the TSO workforce remains at a high level and their diligence continues to keep the flying public safe—even as they worked without pay for 35 days as hostages during a Presidential game of "chicken" with Congress. In addition, TSOs encounter an almost hostile attitude from many in TSA management. Our union knows that rights under title 5 of the U.S. Code which would ensure TSOs the same fair pay, union rights, and respectful treatment as other federal workers are directly tied to the ability of the workforce provide the highest level of aviation security.

I would like to take this opportunity to thank the many members of Congress on both sides of the aisle who stood with TSOs and the colleagues at other Department of Homeland Security (DHS) components, and the Departments of the Interior, Labor, Agriculture, and Justice during the shutdown. Members of Congress publicized the hardship and undue burden placed on government workers during the shutdown, including essential employees of DHS components who worked without pay. The food pantries arranged by Representatives and Senators provided necessities to TSOs and their families. AFGE is also deeply appreciative of legislation filed to ensure furloughed and essential employees received full backpay, were eligible for unemployment compensation, and would have clearances and credit reports protected. Out of a situation created by the government at its worst, federal workers also experienced government at its best.

TSOs' lack of statutory rights is rooted in a combination of two things: First, a desire by the government to provide aviation security on the cheap; and second, a pernicious belief that worker rights are somehow contrary to homeland security. TSA apparently bases its personnel policies on both notions even though each is demonstrably false, and each has made it more difficult for the agency to provide security to the flying public. Above all else, TSA desperately clings to its authority under §111(d) of the Aviation and Transportation Security Act (ATSA) (Pub.L. 107-71).

The footnote reads as follows:

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, (49 U.S.C. §44935 Note).

The footnote has been interpreted by courts and administrative proceedings as granting TSA almost unreviewable authority over TSO employment rights. AFGE was the first union to file judicial challenges to this interpretation beginning in 2003, and we continue to do so in 2019. Congress has never before or since granted any other agency head this level of authority over a group of employees, and for good reason.

In the past, I submitted testimony to Congress describing TSA working conditions as “separate and unequal.” TSA implemented two personnel systems: One created solely for TSOs and one for all other TSA employees, managers included, based largely on the Federal Aviation Administration (FAA) personnel system that applies most of Title 5 of the U.S. Code. Over 44,000 TSOs are denied the ability to appeal adverse personnel decisions to an objective, outside body like the Merit Systems Protection Board (MSPB) or through negotiated grievance procedures. However, like most federal workers, TSA managers *can* appeal adverse personnel decisions (including removals) not only to the MSPB but to the U.S. Court of Appeals. TSOs are subject to a cumulative disciplinary system unlike the progressive disciplinary system applied across other federal agencies, including other DHS components. For too long, the TSO workforce has performed their jobs effectively, efficiently, and with a professional demeanor, all the while under duress largely at the hands of TSA management.

Two recent events rightfully drew the attention of lawmakers and the public to the detrimental situation of the TSO workforce: the disproportionately severe impact of the 2018-2019 government shutdown, and documentation that TSA’s personnel policies are directly linked to TSO retention as set forth in the March 29, 2019 DHS Office of Inspector General Report (OIG), *TSA Needs to Improve Efforts to Hire, Retain and Train Its Transportation Security Officers*. The government shutdown focused attention on the commitment of TSOs to remain on the job on the frontlines of aviation security for over one month without pay. The DHS OIG report supported AFGE’s position that TSA’s personnel policies make it harder for the agencies to hire new TSOs and retain TSOs. These policies also make it harder for TSOs stay on the job and apply their experience, and that is harmful to security. Both the shutdown and TSA personnel policies are a bitter pill for the TSO workforce to swallow.

Partial Government Shutdown

Late December 2018, TSOs received their last full paycheck and they did not receive another full paycheck until the second week of February 2019. When the money from their December 31st paychecks ran out, TSA advised TSOs to “barter” for goods and services and to “work off” debts to creditors because the agency made it difficult for TSOs to take a second job. TSA initially told TSOs it was a violation of agency rules to accept gas or grocery cards from anyone—including their union, AFGE. TSA only approved food distributions at airports after media reports of TSOs and their families utilizing food banks and filing for SNAP benefits. Despite media reports, AFGE was never aware of any organized TSO callouts to protest the shutdown. We were fully aware that towards the end of the shutdown TSOs lacked the funds to fill their gas tanks or pay for mass transit.

The shutdown might be over for the public and the Executive and Legislative branches, but the impacts continue for the TSO workforce. Not all TSOs received backpay in a timely manner. Not all creditors were willing to work with federal workers who missed payments during the 35-day shutdown. We know TSOs burned through sick leave when they were unable to pay for childcare or afford the commute to work. The long-lasting effects of the shutdown continue to have a direct effect on TSOs' personal finances, as well as workplace morale.

TSA Personnel Policies

TSA's application of its authority of the ATSA footnote has created a personnel system that repeatedly leads to dismal workplace satisfaction rankings. We know from the results of the most recent "Best Places to Work in the Federal Government" survey that TSA employees failed to rank the agency above the lowest quartile (25%) in any category with the exception of training. In addition to TSA coming in dead last on satisfaction with pay, TSA employees provided remarkably low scores on the fairness of leadership, matching employee skills to the mission, performance-based rewards and advancement, and teamwork and innovation. The low marks of this survey correlate with concerns AFGE has raised for the past 17 years.

Pay

I began this testimony by noting that TSA cannot provide aviation security on the cheap. Because TSA has abused its authority under the ATSA footnote to shortchange its employees, the agency has actually made it harder to recruit and retain the career, professional workforce the public demanded following the terrible events of 9-11. TSA Administrators have continued to disappoint the TSO workforce by failing to request additional funding from appropriators for a meaningful pay increase for long term TSOs. TSA Administrators have, however, placed priority on funding requests for technology and canines.

The average starting salary for TSOs is about \$35,000. A newly hired TSO begins in the D pay band and is required to complete a two-year probationary period during which time there can be no disciplinary action. At the completion of probation, TSOs automatically receive the E pay band in addition to any Employee Cost Index (ECI), an annually recommended federal civilian employee pay increase. The majority of TSOs then remain stagnant at the E pay band for their entire career. In the event a TSO can secure a promotion to a Lead TSO, they go up one pay band to an F pay-band. But the outlook from there is grim; TSA recently eliminated the ability of bargaining unit employees to be promoted to a G pay band position.

If TSOs can score high enough on the Transportation Officer Pay System, or TOPS evaluation, they may be eligible for a one-time bonus or a slight increase in salary. The TOPS "payout"—a combination of a percentage pay raise and bonus depending on evaluations and other factors—varies from year to year subject to the Administrator's announcement. Last year, the TOPs award for the highest rating of 5 – achieved excellence or 4 – exceeds expectations was a 1 percent pay increase. If you scored a 3 – achieved expectations, you

received no pay increase. These inconsistent and miniscule performance-based increases, particularly when they are not combined with a time-in-grade increase, do very little to retain or reward the frontline aviation security workforce that protects us around the clock.

Any bonuses a TSO may earn under TOPS are not included in TSO base salaries and are not part of the calculation for their retirement under Federal Employee Retirement System. TSOs' lack of opportunity for salary increases today has long-term financial consequences—less retirement income later in life. By contrast, most federal workers have been compensated under the General Schedule (GS) pay system, which has been reformed and updated many times since its inception in 1949. The GS pay system includes step increases at various intervals to employees with satisfactory performance. When there is not a pay freeze, they also receive annual salary adjustments that include a nationwide and locality component. These pay adjustments are based on objective market data from the Bureau of Labor Statistics and mirror the size and direction of salaries in the private sector and state and local government. The GS pay system is notable for the absence of pay discrimination; people in the same job with the same level of performance receive the same salaries regardless of race, gender, age or other attributes unrelated to the job they do for the American people.

Administrator Pekoske has advertised the Career Progression Program as a career path for TSOs that will both improve retention as TSOs move up the ladder and a means to improve pay. AFGE appreciates Administrator Pekoske's intentions, but the Career Progression Program, which TSA did not negotiate over with the Union, does not meet those goals. The Career Progression Program only assists new-hires in receiving pay increases to an E-band level more quickly than before but does absolutely nothing for long-term employees.

Additionally, as pointed out in the DHS OIG report, additional funding is needed to fill program positions. TSA has also promoted a new On the Job Trainers (OJTs) program as a way for officers to receive extra incentive pay but these opportunities are very limited and do not change an officer's salary. Federal Security Directors (FSDs) and other management determine how many OJTs they need depending on operational need and they decide who gets to be an OJT.

Many airports are located near major metropolitan areas with high costs of living. Many TSOs cannot afford a two-bedroom apartment or pay a car note on their salaries. At airports such as San Jose International in Silicon Valley, TSA has offered TSOs recruitment and retention bonuses to maintain its workforce. At the Seattle-Tacoma International Airport, TSA was required to raise TSO pay in response to the city's implementation of a minimum wage increase. TSA currently identifies 89 TSO essential job functions in its current TSO medical guidelines and has established rigorous standards for employment. TSOs are readily employable throughout the airport and other federal agencies. The advantages of seeking employment with another federal agency are substantial for a TSO: A likely significant pay increase, clear and achievable career progressions, full civil service rights under Title 5 of the U.S. Code, and the ability to maintain their commitment to public service. TSA is investing

money to hire, train, and employ an officer only to see them leave for higher paying private employment or go to another federal agency within the GS pay system.

Finally, it is important to note that high ranking TSA officials are paid under the Title 5 guidelines for the Senior Executive Service and the agency has sought special discretion to increase the pay of upper management. The 100 highest paid TSA employees all earn over \$175,000 annually. By pointing out the disparity in pay between TSOs and the top brass at the agency we make no assumption that the executive pay is unearned. AFGE does find it highly inappropriate that the pay disparity between TSA management and TSOs is comparable to the pay difference of Walmart store managers and salesclerks.

TSO Retention Issues Lead to TSO Staffing Shortages

The findings of the DHS OIG report confirms AFGE's warnings that TSA has become a revolving door for the TSO workforce at many airports. TSA emphasizes the hiring of part-time TSOs even though the group is the most likely to leave the agency after a short period on the job. The information TSA provided the DHS OIG indicating the agency's attrition rate is at the same level as the rest of the federal government does not match what AFGE members witness at airports. TSOs at checkpoint are not OJTs, yet they assist the many newly hired TSOs as they learn their duties and have noted that many appear ill-prepared. TSO schedules at some airports are constantly manipulated to meet airline arrivals and departures. As a result, TSOs have little stability in their schedules. Because there is little room in TSA's staffing decisions, at some airports nursing mothers report managers expect them to express breast milk only at specific designated times and are refused breaks as needed. Other TSOs have reported denial of bathroom breaks resulting in unnecessary and demeaning accidents. AFGE recommends that TSA hire an additional 5000 TSOs to replace the staff decline allowed as passenger flows increased; increase starting salaries for new TSOs and provide pay increases to retain long-term TSOs; fully train new TSOs before deploying them to checkpoints; and work with the union to increase the retention of women TSOs.

Many TSOs Perceive TSA to be a Hostile Work Environment

The results of the DHS OIG report on TSA recruitment and retention of its TSO workforce matched AFGE's Freedom of Information Act (FOIA) data which revealed that over a 10-year period between 2008 and 2018, TSA replaced its approximate 44,000 workforce. TSO duties are not easy. The initial responsibility for the safety of the flying public is assigned to TSOs screening passengers and baggage. Dealing with passengers can be stressful and physically taxing, however, AFGE represents thousands of federal employees with stressful and taxing positions. The difference is that federal employees outside of TSA represented by AFGE do not work under the smothering cloak of unfairness described by their TSO brothers and sisters.

Under TSA's interpretation of ATSA, the agency makes and breaks the rules of employment. TSA reinvents pay standards annually. Airport checkpoints are often the fiefdoms of TSA management, reducing the likelihood of consistency between checkpoints or

baggage screening areas. All levels of TSA management exercise extensive discretion in supervision and discipline of TSOs.

The late TSO Robert Henry was an AFGE member. Mr. Henry is the TSO who tragically took his own life at Orlando International Airport on February 2, 2019, and we mourn his loss. While we have no doubt that stress from lack of pay during the shutdown contributed to TSO Henry's suicide, we learned from fellow union members that he was the target of bullying and harassment at the hands of some in TSA management at the airport. Upon inquiry, AFGE learned that although TSO Henry and his colleagues complained about his mistreatment to TSA management, neither they nor TSO Henry was aware of steps taken to stop the bullying or discipline his harassers. In the months since TSO Henry's death, we have learned that TSO Henry's harassment was far from an isolated incident, and our Local Presidents are concerned about suicides among their members. Below are some of the situations described by TSOs in response to an AFGE online survey:

- 3-year TSO at a Cat I airport: *Bullying from passengers, lack of support from supervisors and managers. My airport is a horrible place to work.*
- 9-year TSO at Cat X airport: *I've reported it (name calling, demeaning nicknames, ostracism, unnecessary supervision, disparate treatment for mistakes and other behaviors) personally. I've reported it on behalf of union members as well. This garnered me reprisal, hostility, targeting, unfair discipline, an attempted termination, etc.*
- 6-month TSO at Cat II airport: *I did not report this information (bullying behaviors) to a supervisor because the supervisor was the offending party. Disparate treatment is the corporate culture at our airport. Random and capricious enforcement of rules and regulations, some people have been ostracized, training was so poor that one person was unable to complete training, abuse of leave, time off, and breaks by some people is not addressed which leaves the rest of us holding down the fort...*
- 9-year TSO at Cat I airport: *At the checkpoint where I currently work, it is not bad compared to other checkpoints at my airport. Everyone wants to work at this checkpoint because we have the best supervisors and a great manager that listens and tries her best to help, although there is only so much that she can do because upper management is lacking horribly. Some of the other checkpoints are very bad though, supervisors would yell at TSO's right in front of passengers or micromanage every situation and not give you room to do your job. One checkpoint has no air conditioning, people have passed out from heat exhaustion and nobody has done anything to fix it. All in all, my airport isn't as bad as most, but the stress of the job and upper management definitely affects my health. I was forced to get FMLA just so that I wouldn't get fired for all of the health problems I've been having since working here. I don't know how much longer I can do it. Call-out rates are extremely high for a reason. They need to realize what is going on here*

and do something fast. We need to at least be more reasonably compensated for the work that we do day in and day out.

- *9-year TSO Cat I airport: Filed grievance because of Supervisory Transportation Security Officer (STSO) behavior towards me. STSO violated employee code of conduct through intimidation and bullying unbecoming of a supervisor. Grievance denied by SRO. No investigation. Currently deciding on my options.*
- *2.75-year TSO Cat X airport: Misgendering and being called by various male names as a transgender woman, berated for a "bad patdown" that everyone else saw no problem with, and then listed as temporarily not fit for duty for six months.*
- *2.8-year TSO Cat X airport: Thankfully I've been able to cope with the stress as a previous work experience equipped me to deal with it. But the resources available to my other peers you might as well call a joke because that's what it is. In my opinion if we had Title 5 protection the working atmosphere would indeed improve because leadership will be very aware of the consequences of the wrongdoing.*

These and other responses from across the country were strikingly similar in their details: unfair treatment, no remedy when reported to management, and almost certain retaliation.

Unwarranted disciplinary actions against TSOs present an opportunity for badly-trained and poorly-managed supervisors to victimize TSOs. In 2018, TSA modified their table of penalties for the TSO workforce based on a fundamental misunderstanding of the concept of progressive discipline. Progressive discipline provides increased penalties for particular types of conduct. Under TSA's version of progressive discipline, for example, a tardy will count as the first offense, an unrelated uniform violation as a second offense that includes a more severe disciplinary action which could lead to a proposed removal even though a tardy and a uniform violation are completely different forms of misconduct. There is little incentive to the employee to improve behavior or misconduct.

Each disciplinary action remains in the TSO's personnel files for two years. The mandatory two-year presence of a previous disciplinary action in a personnel file negatively affects almost anything a TSO attempts to do at the agency. TSOs with disciplinary actions in their personnel files cannot transfer to another airport and face disqualification from the Career Progression program. Any corrective action, discipline, or sick leave restriction during the 12 months prior or during the OJT assignment is a disqualification and eliminates a large score of employees from receiving the highest TOPS rating.

The unrelentingly harsh disciplinary policies of TSA do not create a work environment that fosters workforce performance growth and improvement. A disciplinary action grinds a TSO's forward progress to a halt for at least two years. It is difficult for TSOs to clear their

record without the right to appeal adverse personnel actions to the MSPB or a negotiated grievance and arbitration process.

Availability of Counselling and Employee Assistance Programs

AFGE is concerned about reports from Local Presidents regarding the availability of counselling and Employee Assistance Programs (EAP) following suicides of TSOs working at their airports. While some said TSA provided ready access to counsellors, others relayed that counsellors spoke at shift briefings and their colleagues did not feel free to express themselves in public. Responses to our online TSO surveys described several instances of TSOs being unaware of EAP programs or how to receive help. TSA's online link to EAP programs sends TSOs to a Federal Occupational Health website. It is unclear if resources specifically tailored to the stress of TSO duties are available to the workforce.

The Future of U.S. Aviation Security

Seventeen years ago, TSOs organized the first AFGE TSA local indicating a clear preference for union representation. They stood up for the union without statutory protections of their right to organize. AFGE is committed to the fight for full civil service rights and protections for the TSO workforce. Low pay, stressful duties, and a sense of unfairness create a trifecta for low morale and hopelessness that impedes the ability of TSOs to boldly serve as the frontline of U.S. aviation security.

During Administrator Pekoske's April 9th testimony before this Subcommittee, he would not commit to upcoming collective bargaining negotiations with AFGE. Our TSO membership has observed Administrator Pekoske's dismantling of the quarterly labor-management meetings while promoting the newly formed Administrator's Action Group (AAG). AFGE, elected as exclusive representative of the entire TSO workforce—the bargaining unit defined by TSA—is conspicuously absent from the AAG. Currently, the AAG, along with FSDs, STSOs, and other managers are discussing a new awards program even though awards programs are a subject of collective bargaining as defined by TSA. It appears the AAG is a crude attempt at forming a company union within a federal agency. Therefore, AFGE applauds the recent letter to Administrator Pekoske signed by majority Homeland Security Committee Members advocating for continuation of collective bargaining with AFGE and recognizing that bodies like the AAG will not exist as a substitute for the union elected by the TSO workforce to represent them.

We appreciate the continued advocacy of Chairman Thompson and House Appropriations Committee Chairwoman Nita Lowey in support of title 5 rights for the TSO workforce. Their legislation, H.R. 1140, the Rights for Transportation Security Officers Act, is approaching almost 100 cosponsors in the House. When enacted into law the Rights for Transportation Security Officers Act, and its Senate companion, S. 944, the Strengthening America's Transportation Security Act introduced by Senator Brian Schatz, will provide

permanence and predictability of the statutory rights and protections of title 5 of the U.S. Code, the fairness of negotiated grievance and arbitration provisions, and MSPB appeal rights lacking in the work lives of the TSO workforce.

Thank you for holding this hearing and for the opportunity to speak on behalf of the TSO workforce represented by AFGE. I am prepared to answer any questions the subcommittee may have.