



A bold voice for transportation workers

FAIRNESS AND DUE PROCESS FOR FEDERAL TRANSPORTATION SECURITY OFFICERS

By screening passengers and baggage at airports, mass transit systems, and large public gatherings throughout the country, our nation's 45,000 Transportation Security Officers (TSOs) keep travelers and personnel safe. These civil servants play a critical safety and security role in our increasingly mobile society. Unfortunately, while TSOs experience the same challenges as the larger federal workforce, they are denied important federal workers rights due to an irrational management rights clause included in the Aviation Transportation Security Act (ATSA).

When the ATSA was signed into law in 2001, it included a statutory footnote that has been interpreted by the courts and administrative bodies as giving the Transportation Security Administrator the authority to pick and choose whether, and how, Title 5 federal worker rights and protections apply to TSOs. As a result, TSOs are denied many of the basic federal worker rights and protections that are afforded to virtually all other federal employees, including other Transportation Security Administration (TSA) workers and those in intelligence agencies. As an organization that represents other critical safety workers, including air traffic controllers and aviation safety specialists, TTD believes that worker rights and protections need not be sacrificed in the name of safety or security. In fact, the denial of these rights and protections only contributes to dysfunctional operations at TSA and the consistently low scores the agency receives on employee morale and worker satisfaction surveys.

In 2011, despite limited rights granted by the Determination of TSA Administrator John Pistole, the American Federation of Government Employees, a TTD affiliate, negotiated an historic first contract with TSA that granted limited collective bargaining, representation and appeal rights for TSOs. TSOs are still, however, subject to a separate and unequal personnel system that limits, among other things, their access to the Merit Systems Protection Board (MSPB) to appeal actions that adversely affect a TSO's employment status. These rights protect federal employees from discriminatory or arbitrary personnel practices, such as firings or suspensions that are based on political partisanship, by allowing for an independent review of the merits of management decisions. MSPB protections apply to nearly all other federal employees, and have not hindered the ability of other agencies within the Department of Homeland Security (DHS) to carry out their duties of protecting the U.S. public. These agencies also do not suffer from the low worker morale and unfavorable worker satisfaction surveys.

Absent MSPB protections, TSA has created a system for resolving disputes that almost entirely leaves the appeal of adverse personnel decisions to the agency's sole discretion. The National Resolution Center – an internal entity that is unique to TSA and created by management – determines which employee dispute matters contain a legitimate grievance, and attempts to restrict which matters can be brought before a neutral third party for review. TSOs currently lack the ability to appeal adverse personnel decisions directly to the MSPB. TSA has offered to allow MSPB to review personnel decisions, but only if the decisions are submitted to the TSA

administrator for concurrence. As an independent agency, MSPB has correctly refused to surrender its authority and autonomy and hear cases that can be overturned at the discretion of management. Nor would this arrangement adequately protect TSOs from wrongful firings or punishment. TSOs deserve the right to have an independent third-party review of adverse personnel decisions – a right provided even to those in management at TSA who oversee transportation security operations.

The TTD Executive Committee believes that Title 5 rights, including MSPB protections, are fundamental rights that should be extended to all federal employees. The men and women who keep the traveling public safe should not be exempted from these rights, and deserve the full protection of the law as envisioned by Congress when the MSPB was created. We will support legislation or executive action that requires TSA to follow the same laws, regulation, and guidance regarding its workforce as other federal agencies. TSOs work hard every day to protect the American people. It is time that they received the rights and protections that they deserve.

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