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TSA Nominee Erroll Southern's Stand on Collective Bargaining Needs Clarity

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President Obama has nominated Erroll Southern to serve as Administrator of the Transportation Security Administration (TSA), which employs the airline security screeners charged with preventing terrorists from boarding American airplanes. As the head of the TSA, Southern would decide whether the organization collectively bargains over security procedures. Collective bargaining—currently forbidden for the TSA—would put American lives at risk by preventing the TSA from responding rapidly to new intelligence and by replacing merit promotions with seniority schedules.

Southern has refused to state whether he would change TSA policy on collective bargaining. American lives are at stake if the TSA fails in its mission. Congress should consequently wait to confirm any nominee to head the TSA until that nominee states his or her position on mandatory collective bargaining over security procedures.

TSA Chooses Whether to Collectively Bargain. Current law gives the TSA discretion over whether to collectively bargain with airport security screeners. Since its creation, the TSA has determined that collectively bargaining with security screeners could endanger the safety of America's air passengers.

TSA screeners may belong to a union, and the TSA withholds union dues for screeners who request it. But unless the TSA changes its policy, the union may not collectively negotiate how TSA screeners perform their jobs.¹

Collective Bargaining Endangers Passengers. The TSA has avoided collective bargaining for good

reason: Collective bargaining would reduce its effectiveness. The TSA needs the maximum flexibility to respond to potential threats. It needs the ability to rush screeners to high-risk locations and modify screening procedures at a moment's notice. Following the attempted U.K. airline bombings, for example, the TSA overhauled its procedures in less than 12 hours to prevent terrorists from smuggling liquid explosives onto any U.S. flights.²

The TSA cannot afford spending weeks or months negotiating new procedures or personnel assignments, as collective bargaining requires. Other government unions in the Department of Homeland Security have strongly resisted changing established procedures and the flexible assignment of personnel. The National Treasury Employees Union, for example, successfully brought the Customs and Border Protection (CBP) before arbitration for breaking its contract after the CBP changed security procedures without first collectively negotiating them.³

Other countries that allow collective bargaining over security procedures have found that it harms national security. A 2006 labor dispute in Toronto caused many pieces of luggage to go unscreened

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and allowed 250,000 passengers to board their planes with minimal or no security screening.

The TSA needs the flexibility to act immediately to protect Americans. Collective bargaining introduces a layer of bureaucracy and delay that America cannot afford.

Merit Promotions Protect National Security. Collective bargaining also impairs merit promotions. Today, airport screeners earn their promotions through merit and competence, not seniority. The TSA evaluates screeners on the basis of technical proficiency, training and development, customer service skills, teamwork, professionalism, and leadership, and it awards promotions, raises, and bonuses to high performers.⁴ This allows the TSA to assign the best screeners to the most sensitive posts and to keep screeners motivated despite the potential tedium of their jobs.

Government unions insist on seniority-based promotions in collective bargaining, however. If Congress gives unions the chance, they are all but certain to insist on a seniority schedule for the TSA. The American Federation of Government Employees (AFGE) has already sued the TSA for laying off workers who performed poorly on tests of skill without taking into account their seniority.⁵

A seniority-based promotion system would reduce performance-based incentives for individual workers and harm national security in the process. America needs the best and most motivated screeners in the most sensitive positions, not necessarily those on the job the longest.

TSA Nominee Ambiguous on Collective Bargaining. Unions that want to represent TSA

employees, such as the AFGE, have strongly pressured the TSA to collectively bargain with them. The TSA has steadfastly refused to undermine the safety of America's air passengers by doing so. While union inefficiencies at companies such as General Motors reduce competitiveness and cost jobs, union inefficiencies at the TSA could cost lives.

During Southers's confirmation process, he repeatedly refused to state whether he would change TSA policy on collective bargaining. In written responses and in committee, Southers has only stated that he will "thoroughly review this matter."⁶ If confirmed, Southers could maintain the current standards or change them to accommodate government employee unions.

Stakes Too High to Ignore. Collectively bargaining over security procedures represents a significant shift in policy that the Senate should carefully consider before confirming any nominee to head the TSA. The stakes—American lives—are too high to ignore. Collective bargaining with security screeners would deny the agency the flexibility to rapidly respond to security threats and prevent the best workers from getting ahead.

Congress should wait to confirm the TSA Administrator until the nominee states his or her position on collective bargaining and carefully evaluate whether Southers's policies as head of the TSA would put American lives at risk.

—James Sherk is Bradley Fellow in Labor Policy in the Center for Data Analysis at The Heritage Foundation. The author thanks Heritage Foundation intern David Green for his contributions to this report.

1. Tom Ramstack, "Unions Aim to Halt Layoffs of Airport Screeners," *The Washington Times*, July 9, 2003, at www.washtimes.com/business/20030708-094836-4179r.htm (November 6, 2009).
2. Kip Hawley, Assistant Secretary, Transportation Security Administration, statement before the Subcommittee on Homeland Security, Committee on Appropriations, U.S. House of Representatives, February 13, 2007, at http://www.tsa.gov/assets/pdf/hahsc_security_challenges.pdf (November 6, 2009).
3. Decision of M. David Vaughn in federal arbitration between U.S. Department of Homeland Security, Bureau of Customs and Border Protection, and National Treasury Employees Union, November 15, 2006. The full decision is available from the author upon request.
4. Statement of Kip Hawley, February 13, 2007.
5. Ramstack, "Unions Aim to Halt Layoffs of Airport Screeners."
6. *Post-Hearing Questions for the Record: Erroll Southers*, Committee on Commerce, Science and Transportation, U.S. Senate.