

DETERMINATION
on
TRANSPORTATION SECURITY OFFICERS and COLLECTIVE BARGAINING

Introduction

On February 4, 2011, the Transportation Security Administration (TSA) issued a Decision Memorandum Determination on Transportation Security Officers and Collective Bargaining (2011 Determination). The 2011 Determination set forth the Background prior to its issuance, the Basis and Criteria, and the Essential Components: 1) legal authority; 2) covered employees; 3) scope of representation and coverage; 4) rights, roles, and responsibilities of covered employees, unions, TSA management and TSA, and the conditions on union campaign activities; and 5) resolution processes.

As explained in the 2011 Determination, TSA's labor framework is unique and must be implemented in the context of how to best achieve TSA's critical security mission. TSA's unique labor framework cannot adversely impact the resources and agility necessary to protect the security of the traveling public. The 2011 Determination further explained that TSA's labor framework would continue to evolve and improve. After operating under the 2011 Determination for nearly 4 years, questions and issues arose that required modifications and clarifications. Additionally, the current Collective Bargaining Agreement between TSA and the American Federation of Government Employees was scheduled to expire in December 2015, and direction was needed for any bargaining of a second binding collective bargaining agreement.

On December 29, 2014, TSA issued a new Determination modifying the 2011 Determination. The 2014 Determination superseded and replaced the 2011 Determination in its entirety. On May 31, 2016, TSA issued a Modification to the 2014 Determination with respect to the collective bargaining effort occurring in 2016 only.

Today, TSA issues this new Determination superseding and replacing the 2014 Determination in its entirety. To the extent that disputes filed in the TSA Unitary Dispute Resolution System involve the 2011 Determination or the 2014 Determination, the document in effect at the time of the dispute controls. If there are questions about the meaning of terms in those documents, this Determination will be used in interpreting and understanding those documents.

Background

Under the legislation that created TSA, the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, Congress gave the TSA Administrator the authority to set the terms and conditions of employment for the screening workforce notwithstanding any other provision of law. 49 U.S.C. § 44935 note. This means the TSA Administrator has very broad authority to establish terms and conditions of employment for the screening workforce, including the labor framework for the employees defined as covered employees in Section II of this Determination.

On January 8, 2003, former TSA Administrator James M. Loy used this authority to issue a determination concerning Transportation Security Officers (TSOs) and collective bargaining.

Administrator Loy concluded, at that early stage of TSA's journey, that TSA's security mission required that TSOs not be allowed to engage in collective bargaining or be represented for the purpose of engaging in such bargaining by any representative. On February 4, 2011, former Administrator John S. Pistole modified Administrator Loy's determination by providing for an election concerning representation and, if a union was elected, for carefully defined limited exclusive union representation under conditions and within a framework unique to TSA. This framework was designed to not adversely impact the resources and agility necessary to protect the security of the traveling public. Consistent with the 2011 Determination, the Federal Labor Relations Authority (FLRA) conducted an election and runoff election and certified the American Federation of Government Employees (hereafter referred to as "the Union" or "the exclusive representative") as the union representing covered employees. On December 29, 2014, TSA issued the 2014 Determination. On May 31, 2016, TSA issued a Modification to the 2014 Determination with respect to the collective bargaining effort occurring in 2016 only.

As noted above, today, under the above-referenced statutory authority, TSA issues this 2016 Determination.

Criteria for this Determination

Pursuant to my authority under ATSA § 111(d) explained in Section I below, the criteria that shape the unique labor framework set forth in this Determination are:

1. The labor framework must honor the need of every employee to be valued and to have a voice, the desire of some employees for an advocate, and the freedom of each employee to choose if and how to give voice to their ideas and concerns. Both covered employees and TSA could benefit from some aspects of union representation provided that union representation is recognized within a framework that protects TSA's security mission.
2. The labor framework must enable TSA to be agile and to swiftly change security procedures, practices, and technology without costly and distracting adversarial proceedings. TSA will not bargain about security policies, procedures, and operations or issues affecting security.
3. Labor management relations must be results oriented and designed to solve problems and resolve issues consistent with this Determination rather than defer resolution through lengthy, adversarial avenues.
4. Consistent with the public good and the provisions of ATSA, no employee or union may participate in a strike or assert the right to strike. This prohibition applies to work slowdowns, concerted call-outs, and any other conduct viewed as a collective job action.
5. The labor framework must provide for the broadest possible participation and involvement by all covered employees. TSA must have the benefit of input from all covered employees at the frontlines of security, day in and day out.
6. The labor framework must provide a work climate that fosters the engagement of each covered employee; this framework must enable TSA to build an organization that values and promotes initiative, knowledge and information sharing, coordination, and teamwork. With this in mind, TSA management and covered employees are encouraged to, as

- appropriate, cooperatively engage in resolving workplace concerns and issues consistent with this Determination.
7. Procedures for resolving disagreements must be efficient, fair, and transparent.
 8. TSA must continue the culture of collaboration and employee engagement that is critical to its mission. Unions can play a constructive role. They can help develop solutions for some systemic issues, bring local concerns to national attention when existing mechanisms prove inadequate to the task, bring forth the concerns of employees who choose to have them do so and serve as an advocate for those employees who choose not to advance their concerns themselves. Such representation can help support our workforce and ensure consistency and accountability within our far flung operation across nearly 450 airports. Although the enhanced engagement of individual employees is not inevitably the outcome of union representation, it can be and must be at TSA.
 9. TSA cannot stay locked into the lessons of the past or the practices of today if it is to anticipate and identify the threats of tomorrow. A one-size-fits-all model of labor relations that undermines initiative and flexibility would not serve TSA or its workforce well.
 10. TSA cannot afford to have either attention or resources diverted from its mission beyond what is necessary to serve that mission by promoting employee morale and vigilance. The resources and attention required by this labor relations framework must be commensurate with its benefit to TSA's mission.

Components of this Determination

I. Authorities:

- A. ATSA § 111(d) supersedes the Federal Services Labor-Management Relations statute (5 U.S.C. Chapter 71) and therefore Chapter 71 does not apply, or afford any rights, to covered employees or the Union.
- B. In the 2011 Determination, it was determined that an election conducted by the FLRA under the principles and conditions set forth and for the purposes described in the 2011 Determination did not conflict with the TSA Administrator's statutory authority over covered employees' terms and conditions of employment under § 111(d) of ATSA (49 U.S.C. § 44935 note). The 2011 Determination set forth the rights of TSA management, unions, and covered employees in this unique labor framework.
- C. This Determination continues to set forth the rights of covered employees, the Union, and TSA management in this unique labor framework. Specifically, consistent with this Determination, covered employees have the rights set forth in Section IV.A, the Union has the rights set forth in Section IV.C, and TSA management has the rights set forth in Section IV.D. Covered employees, the Union, and TSA management also have the rights set forth in a binding collective bargaining agreement in effect consistent with this Determination.

- D. This Determination will be interpreted to advance, and not hinder, TSA's core mission to secure the Nation's transportation systems. Because TSA has been entrusted to administer the security of the transportation network, TSA management determines whether interpretation of any provision of the Determination promotes or detracts from transportation security. Therefore, TSA management's interpretation of the Determination's provisions will be entitled to deference over the interpretations of any other individual or group. Further, because of the dynamic nature of TSA's security mission, ambiguities regarding the Determination's provisions are not entirely foreseeable, and such ambiguities will not be construed against TSA management.
- E. TSA management determines what constitute operational needs and operational requirements. TSA management also determines when it experiences operational needs and operational requirements.
- F. No provision of a binding collective bargaining agreement will prevent TSA management from changing TSA policy on issues not subject to collective bargaining under this Determination.
- G. To the extent that TSA management has engaged in a practice related to the terms and conditions of covered employees' employment over a period of time that has been followed by covered employees, and/or the Union, TSA management is not bound to engage in that practice in the future. Given TSA's security mission and unique labor framework, it is within TSA management's discretion whether to continue such a practice, regardless of the length of time the practice has been followed.
- H. If a binding collective bargaining agreement contains a provision addressing an issue(s) that is excluded from collective bargaining under Section III.B.8 of this Determination, TSA management cannot be required to negotiate that provision or include that provision in any future collective bargaining agreement. Further, if TSA management and the Union discuss, at any time, an issue that is excluded from collective bargaining, TSA management has not waived or altered that exclusion or any exclusion.
- I. If TSA management chooses, in its discretion, to enter into an agreement with the Union other than the ground rules agreement and binding collective bargaining agreement negotiated by TSA management and the Union consistent with this Determination, the existence of such an agreement does not expand, alter, or otherwise affect the rights set forth under this Determination.
- J. This Determination and the TSA policies implementing it set forth the labor framework applicable to covered employees.

II. Covered Employees:

- A. Employees included in the national unit for the purposes of exclusive representation consistent with this Determination, also referred to as "covered employees," or "bargaining unit employees," are the following full- and part-time non-supervisory

personnel carrying out screening functions under 49 U.S.C. § 44901, as that term is used in ATSA § 111(d):

1. Transportation Security Officers;
 2. Lead Transportation Security Officers;
 3. Behavior Detection Officers;
 4. Lead Behavior Detection Officers;
 5. Security Training Instructors; and
 6. Equipment Maintenance Technicians.
- B. Employees who otherwise would be covered by this Determination will be excluded if: they are supervisors or part of management; perform personnel work in other than a purely clerical capacity; engage in intelligence work, provided that merely possessing a security clearance and having occasional access to classified information will not be deemed as engaged in intelligence work; or act in a confidential capacity with respect to a supervisor or management official who formulates or effectuates management policies in employment or labor relations matters.

III. Scope of Representation and Coverage:

A. Personal Representation:

1. For purposes of personal representation in matters for which this Determination, TSA policy, or any binding collective bargaining agreement in effect consistent with this Determination allow for personal representation, any covered employee may designate a personal representative without fear of coercion or retaliation.
2. As explained in Section IV.A.4 and Section IV.C.2, personal representatives selected by covered employees need not be Union representatives, and the Union is not obligated to provide personal representation for covered employees who are not dues-paying Union members.
3. A covered employee may not select an individual acting in his/her capacity as a representative from a labor organization other than the Union to serve as his/her personal representative.
4. Personal representatives, if not TSA employees, will be required to sign a Sensitive Security Information (SSI) non-disclosure agreement.
5. Personal representatives are required to comply with the security requirements at airports and other TSA work locations.

B. Union Representation for Purposes of Collective Bargaining:

1. The Collective Bargaining Agreement (CBA) entered into by TSA management and the Union with the general effective date of December 9, 2012, will apply to covered employees until the CBA expires on December 9, 2015, subject to any exception below (see pages 11-13).
2. TSA management and the Union will negotiate a second collective bargaining agreement, and any subsequent collective bargaining agreements, as set forth in this Determination.
3. TSA management and the Union will begin negotiating for a new collective bargaining agreement no earlier than 120 calendar days before the expiration date of the existing binding collective bargaining agreement.
4. *Ground Rules:*
 - a. TSA management and the Union will begin ground rules negotiations for a new collective bargaining agreement no earlier than 30 calendar days before the 120 calendar day time period explained in Section III.B.3.
 - b. TSA management and the Union will have 30 calendar days to negotiate ground rules for collective bargaining for a new collective bargaining agreement.
 - c. The ground rules negotiated must be consistent with this Determination and will address the following issues only: the collective bargaining teams (including a reasonable number of participants for each team), the authority of the chief negotiators, the official time and travel for covered employees who serve on the Union's collective bargaining team to attend negotiations and related tasks, the location of the negotiation sessions, the collective bargaining schedule and sessions, the negotiation procedure consistent with interest-based bargaining, and the referendum process.
 - d. The amount of official time for covered employees agreed to in ground rules by TSA management and the Union must be reasonable and must be commensurate to the task for which official time is being provided.
 - e. If TSA management and the Union do not reach agreement on ground rules within 30 calendar days, the outstanding issue(s) will be put before the resolution process established under Section V below.
5. *Time Frame for Negotiating a New Collective Bargaining Agreement:*
 - a. TSA management and the Union will have 90 calendar days to negotiate a new collective bargaining agreement. The collective bargaining period will end on the 90th calendar day unless TSA management and the Union agree to an extension as explained in Section III.B.5.b.

- b. The period of collective bargaining for a new collective bargaining agreement may be extended for one 30 calendar day period, if TSA management and the Union agree to this extension. There will be no additional extension of the period for collective bargaining and the period for collective bargaining will end on the 30th calendar day of the extension.
6. *General Requirements for Negotiating a New Collective Bargaining Agreement:*
- a. Collective bargaining will take place near TSA Headquarters.
 - b. Collective bargaining for a new collective bargaining agreement will occur only at the national level; local level bargaining and local level agreements are prohibited.
 - c. A new collective bargaining agreement will be national in scope and will apply to all covered employees.
 - d. TSA management and the Union will use interest-based bargaining when negotiating a new collective bargaining agreement.
 - e. The members of TSA management's and the Union's respective collective bargaining teams will attend joint training on interest-based bargaining before beginning collective bargaining.
 - f. Collective bargaining will be facilitated by one or more facilitators/mediators agreed upon by TSA management and the Union. If either TSA management or the Union objects to a proposed facilitator/mediator, that facilitator/mediator will not be selected to provide facilitation or mediation services.
 - g. The term of a new binding collective bargaining agreement will be three (3) years.
7. *Issues Subject to Collective Bargaining for a New Collective Bargaining Agreement:*
The establishment, determination, or adjustment of the following issues will be subject to collective bargaining, with the scope of these issues defined by the exclusions in Section III.B.8 below:
- a. Performance management process;
 - b. Awards and recognition process;
 - c. Attendance management process;
 - d. Shift and annual leave bid process (excluding shift start times and types of shifts, numbers, days off, and guarantee of consecutive weeks);
 - e. Shift trade policy;
 - f. Transfer policy;
 - g. Process for work status change from full-time to part-time and vice versa;

- h. Uniforms and uniform allowances not including relevant security requirements;
- i. Selection process for special assignments;
- j. The following matters to the extent that they are solely within the control of TSA management:
 - i. Non-security related equipment provided to covered employees by TSA, consistent with TSA's space and environmental constraints;
 - ii. Temperature;
 - iii. Lighting;
 - iv. Nursing mother facilities;
 - v. Break space for covered employees' use;
 - vi. Management of employee work areas;
 - vii. New facilities;
 - viii. Access to TSA-controlled space for Union representational activities;
 - ix. Procedures regarding the requesting of airport-issued identification (ID) media for Union representatives to the extent permitted by the applicable Airport Security Program;
 - x. Space and equipment for the Union's locals;
 - xi. Distribution and provision of communications between covered employees and the Union; and
 - xii. Distribution of the collective bargaining agreement; and
- k. Parking subsidies.

8. *Issues Excluded from Collective Bargaining for a New Collective Bargaining Agreement:* The establishment, determination, or adjustment of the issues listed below concerning covered employees will be decided by the TSA Administrator. These issues and/or the impact and implementation of decisions concerning them will not be subject to collective bargaining. These issues and/or the impact and implementation of decisions concerning them also will not be grievable consistent with TSA policy.

Moreover, the issues excluded from collective bargaining listed below will have the broadest possible interpretation as to scope, meaning, and interpretation:

- a. Pay and policies affecting pay, including without limitation pay upon appointment, promotion, reassignment, demotion, or pay based on any other

consideration or personnel action. To clarify, this includes but is not limited to: pay based upon performance including in-position increases and performance awards, official time,¹ personnel actions affecting pay band or rate of pay, schedule adjustments of covered employees to provide official time to perform representational or other functions, travel time, and travel expenses;

- b. Security policies and procedures, including without limitation standard operating procedures, directives, instructions, training, and means and methods of implementing such procedures, and security operations (e.g., security checkpoint operations, exit lane operations);
 - c. Deployment of security personnel, including without limitation TSA's ability to have the covered employees with the required certifications in the necessary locations at the necessary times to meet operational needs;
 - d. Deployment of equipment and technology, including without limitation source selection, investigation, testing, modification, selection, and maintenance;
 - e. Job descriptions, qualifications, fitness for duty standards, performance standards, and staffing, numbers, and types of employees (including covered employees). To clarify, this includes but is not limited to: performance goals, competencies, and measures, qualifications set forth in ATSA (including but not limited to other qualifications that the TSA Administrator may establish such as medical guidelines or standards), and staffing decisions (including but not limited to realignments, involuntary workforce reductions, and other staffing and deployment increases, reductions, or movements);
 - f. Annual certification requirements, testing, and consequences of failure to certify or recertify;
 - g. Means and methods of covert testing and use of results;
 - h. Any action deemed necessary by the TSA Administrator or his/her designee to carry out the TSA mission during emergencies;
 - i. Disciplinary standards and penalties; and
 - j. Internal security practices, including without limitation policies designed to safeguard personnel and property.
9. *Issues For Resolution that Arise During the Collective Bargaining Process:* If, at the end of the period for collective bargaining for a new collective bargaining agreement, TSA management and/or the Union raise allegations under Section V.C.9.a.ii (failure

¹ Official time is defined as time authorized by a designated TSA management official to allow a covered employee, when otherwise in a duty status, to participate in certain authorized activities (e.g., certain Union representational functions consistent with this Determination and TSA policy). These authorized activities are not the covered employee's official duties unless otherwise stated in TSA policy.

to bargain in good faith) and/or Section V.C.9.a.iii (failure to agree on terms of the collective bargaining agreement), those allegations will be put before the resolution process established under Section V below. The party raising the allegations must precisely state the allegations, including, in a Section V.C.9.a.iii claim, the specific proposals that TSA management and the Union did not agree upon at the end of the collective bargaining period.

10. *Referendum on a Tentatively Agreed Upon New Collective Bargaining Agreement:*

- a. A new collective bargaining agreement negotiated and tentatively agreed to by TSA management and the Union will be binding on the parties and covered employees after it has been presented to all covered employees and voted on in a referendum and ratified.
 - i. TSA management and the Union will negotiate the logistics of the referendum process in the ground rules as set forth in Section III.B.4.
 - ii. The results of the referendum and any information gathered through it must be made available to TSA management, the Union, and covered employees.
 - iii. If the majority of covered employees voting in the referendum approve the new collective bargaining agreement, it will be ratified.
- b. If the new collective bargaining agreement is not approved:
 - i. With the exception of the collective bargaining effort occurring in 2016, if the new collective bargaining agreement is not approved, TSA management and the Union will resume bargaining during the 45 calendar day period that starts on the day after the announcement of the referendum results. TSA management and the Union also will discuss any feedback received from covered employees.
 - ii. For purposes of the collective bargaining effort occurring in 2016 only, if the new collective bargaining agreement is not approved, TSA management and the Union will resume bargaining for a 45 business day period on August 1, 2016 and ending on October 3, 2016. TSA management and the Union also will discuss any feedback received from covered employees during this 45 business day period.
- c. If a revised collective bargaining agreement is agreed upon:
 - i. With the exception of the collective bargaining effort occurring in 2016, if a revised collective bargaining agreement is agreed upon during this 45-day period, it will be binding after it is submitted to all covered employees for an up or down vote and ratified.
 - ii. For purposes of the collective bargaining effort occurring in 2016 only, if a revised collective bargaining agreement is agreed upon during this 45 business

day period, the revised agreement will be binding after it is submitted to all covered employees for an up or down vote during the second referendum period and ratified.

- a) The second referendum period will begin on October 10, 2016 and end on December 8, 2016.
- b) The voting period during the second referendum period will be for 31 calendar days.
- c) The Chief Negotiators for TSA and the Union may agree to amend the Ground Rules Agreement to include the logistics of the second referendum process.

d. During and after the referendum:

- i. With the exception of the collective bargaining effort occurring in 2016, if a majority of covered employees voting do not affirmatively support the revised collective bargaining agreement or TSA management and the Union do not come to agreement on a revised collective bargaining agreement during the 45-day period, TSA policy will govern or will continue to govern the 11 issues listed in Section III.B.7 that would otherwise be subject to collective bargaining consistent with the Determination. Claims that arise regarding these 11 issues in Section III.B.7 will be handled the same as other alleged violations of TSA policy. If a third party imposes one or more provisions into the binding collective bargaining agreement consistent with Section III.B.9 and Section V, claims regarding that provision(s) will be handled as an alleged collective bargaining agreement violation(s).
- ii. For purposes of the collective bargaining effort occurring in 2016 only:
 - a) The collective bargaining agreement effective as of December 9, 2012 will remain in effect through October 9, 2016 and may be further extended subject to Section III.B.10.d.ii.c below.
 - b) If TSA management and the Union do not reach a tentative agreement on the majority of sections and sub-sections in all articles of a revised collective bargaining agreement by the expiration of the 45 business day period ending on October 3, 2016, TSA policy will govern all issues as of October 10, 2016 and until a new binding collective bargaining agreement is in effect consistent with this Determination. Claims that arise regarding the 11 issues listed in Section III.B.7 will be handled the same as other alleged violations of TSA policy.
 - c) If TSA management and the Union reach a tentative agreement on the majority of sections and sub-sections in all articles of a revised collective bargaining agreement by the expiration of the 45

business day period ending on October 3, 2016, the collective bargaining agreement effective as of December 9, 2012 will remain in effect through December 8, 2016. If the covered employees vote to reject any revised collective bargaining agreement in the second referendum period, TSA policy will govern all issues as of December 9, 2016 and until a new binding collective bargaining agreement is in effect consistent with the Determination. Claims that arise regarding the 11 issues listed in Section III.B.7 will be handled the same as other alleged violations of TSA policy.

e. Next Collective Bargaining Effort:

- i. If a third party imposes no provisions into the binding collective bargaining agreement consistent with Section III.B.9 and Section V, TSA management and the Union will begin collective bargaining consistent with this Determination two years from either the date that the majority of covered employees voting do not approve the revised collective bargaining agreement or the date that the 45-day period ended, whichever is later. The Union retains the rights, roles, and responsibilities listed in Section IV.C during this 2-year period.
- ii. If a third party imposes one or more provisions into the binding collective bargaining agreement consistent with Section III.B.9 and Section V, TSA management and the Union will begin collective bargaining on all 11 issues listed in Section III.B.7 before those provisions expire consistent with this Determination.

11. *When a New Collective Bargaining Agreement Is Binding:*

- a. A new collective bargaining agreement will be binding on TSA management, the Union, and all covered employees if approved by referendum held among all covered employees under Section III.B.10.
- b. To the extent that a third party imposes provisions for the binding collective bargaining agreement consistent with Section V, those provisions will be binding upon the effective date imposed by the third party, which will be no earlier than 30 calendar days from the date of the third party's decision.

12. *Changes to the Terms and Conditions of Covered Employees' Employment and a Binding Collective Bargaining Agreement:*

- a. In the event that TSA management makes a change in a term or condition of employment of covered employees that: (i) is not excluded from collective bargaining under Section III.B.8 of this Determination, and (ii) results in a collateral effect on an issue or section of an article of a binding collective bargaining agreement in effect consistent with this Determination, the Union may reopen the affected issue or section(s) of such article for negotiations.

- b. Issue(s) or section(s) not affected by TSA management's action or change in a term or condition of employment of covered employees will not be reopened. Reopening an affected issue or section for negotiations will not preclude the change from taking effect.
- c. Any provision agreed to by TSA management and the Union consistent with this section will be imposed into the binding collective bargaining agreement and will expire when the binding collective bargaining agreement expires.
- d. This section does not alter, limit, or otherwise affect the issues excluded from collective bargaining in Section III.B.8.

13. *Expiration of a Binding Collective Bargaining Agreement:*

- a. The binding collective bargaining agreement will expire at the end of its stated term and will not roll over or otherwise remain in effect after that date, subject to the following:
 - i. If TSA management and the Union reach a tentative agreement on the majority of sections and sub-sections in all articles of a new collective bargaining agreement by the expiration date of the existing binding collective bargaining agreement and the only pending matter is the referendum by covered employees as set forth in Section III.B.10, the existing binding collective bargaining agreement may continue and remain in effect during the referendum period not to exceed 60 consecutive calendar days.
 - ii. If TSA management and the Union fail to reach a tentative agreement on the majority of sections and sub-sections in all articles of a new collective bargaining agreement, or the referendum period exceeds this 60-day period, or the covered employees fail to ratify the new collective bargaining agreement, the existing binding collective bargaining agreement will not remain in effect.
 - iii. TSA policy will govern the 11 issues subject to collective bargaining listed in Section III.B.7 after this 60-day period expires and until a new binding collective bargaining agreement is in effect consistent with this Determination. Claims that arise regarding these 11 issues listed in Section III.B.7 will be handled the same as other alleged violations of TSA policy.
- b. Consistent with Section III.B.13.a above, once the binding collective bargaining agreement has expired, TSA policy will govern all issues until a new binding collective bargaining agreement is in effect consistent with this Determination. Claims that arise regarding the 11 issues listed in Section III.B.7 will be handled the same as other alleged violations of TSA policy.

C. Future Elections:

1. A future election may be conducted by the FLRA for the purposes described in this Determination provided the election is conducted under the principles and conditions set forth in this Determination.
2. A petition may be filed with the FLRA for a new election if 30 percent of the employees in the bargaining unit allege that the exclusive representative is no longer the representative for the majority of employees in the bargaining unit.
3. The TSA Administrator will then determine how the election will proceed. Should a future election be conducted, TSA will issue policy governing conditions on union campaign activities. This policy will address topics including but not limited to compliance with all requirements and limitations related to Sensitive Security Information (SSI), mission-related moratorium on campaigning, union representatives' contacts with covered employees, and limits on location of campaign activities.

IV. Rights, Roles, and Responsibilities:

A. Covered Employees:

1. All covered employees are free to join, support, or request representation by the Union consistent with this Determination without fear of coercion or retaliation. No covered employee is or may be required to join or support a labor organization (including the Union) or pay dues or fees if not a member of that labor organization.
2. A covered employee has the right to engage directly with TSA management and other TSA employees regardless of whether the covered employee pays dues to or is a member of the Union.
3. All covered employees may use and participate in the representational framework set forth in this Determination consistent with TSA policy. TSA prohibits any form of reprisal or retaliation against a covered employee for using and participating in the representational framework set forth in this Determination. Retaliation or threats of retaliation against covered employees for participating in this representational framework will constitute grounds for corrective or disciplinary action.
4. A covered employee may designate any individual, whether that individual is employed by, a member of, or a representative of a labor organization, to be his/her personal representative in a matter for which this Determination, TSA policy, or a binding collective bargaining agreement in effect under this Determination allows for personal representation, provided: the covered employee properly designates the personal representative consistent with TSA policy; that individual is willing and available to serve as a personal representative; and TSA policy permits that individual to serve as a personal representative in that matter.

- a. A covered employee may not designate a representative from a labor organization other than the exclusive representative to serve as the covered employee's personal representative in his/her capacity as a representative of that other labor organization.
5. Consistent with TSA policy, a covered employee who requests representation will have a right to personal representation during an examination or investigation by TSA which the covered employee reasonably believes may result in discipline provided that: (a) securing such representation does not unreasonably delay the investigation; and (b) the covered employee properly designates the personal representative consistent with TSA policy and Section IV.A.4 above.
6. Consistent with this Determination, all covered employees will have the right to vote in a referendum on whether to support a collective bargaining agreement tentatively agreed to by TSA management and the exclusive representative.
7. *Official Time:*
 - a. A covered employee serving on the Union's collective bargaining team will receive official time to perform this function consistent with Section III.B.4.d of this Determination and TSA policy.
 - b. A covered employee who serves as a properly designated personal representative in a matter for which this Determination, TSA policy, or a binding collective bargaining agreement in effect under this Determination allows for personal representation will receive official time consistent with TSA policy. This will be a reasonable amount of official time consistent with operational needs and the scale and duration of the matter at issue but in no instance will official time for a given matter or meeting exceed eight (8) hours without written justification submitted to management and written approval from the Federal Security Director (FSD) to whom the covered employee ultimately reports or the FSD's designee.
 - c. A covered employee who serves as a Union representative at a formal discussion consistent with Section IV.C.3 of this Determination and TSA policy will receive official time consistent with TSA policy to attend the formal discussion.
8. Covered employees are responsible for maintaining respectful and constructive communication on work issues and concerns with co-workers, Union representatives, and TSA management, and for acting in a manner characterized by cooperative problem solving approaches to raising, addressing, and seeking resolution of issues.
9. Consistent with this Determination, covered employees are responsible for following TSA management direction even if the covered employee believes that TSA management's direction violates a provision of a binding collective bargaining agreement in effect. Covered employees and TSA management are encouraged to discuss these issues. If TSA management proceeds with the direction, the covered employee must follow the direction and may file a grievance consistent with this

Determination and TSA policy. Failure to follow direction may constitute grounds for corrective or disciplinary action.

10. Covered employees must not participate in a strike or assert the right to strike. This prohibition applies to work slowdowns, concerted call-outs, and any other conduct viewed as a collective job action.
- B. Unions (Generally): Unions participating in an election on the representation of covered employees have the right to engage in campaign activities consistent with Section III.C.3 of this Determination and TSA policy.
- C. The Union:
1. The Union has the right to:
 - a. At the national level, engage in collective bargaining with respect to terms and conditions that are national in scope and fall within the issues subject to collective bargaining as set forth in Section III.B.7 and not excluded from collective bargaining under Section III.B.8;
 - b. Enter into a collective bargaining agreement reached as a result of good faith collective bargaining that is subject to a referendum as provided in Section III.B.10; and
 - c. Request and receive from TSA information maintained by TSA in the normal course of business, reasonably available, and relevant and necessary to understanding issues subject to collective bargaining as set forth in Section III.B.7 and not excluded from collective bargaining under Section III.B.8 consistent with TSA's requirements for Sensitive Security Information (SSI).
 2. The Union has the right to have a Union representative serve as a personal representative for a covered employee provided: (a) the matter is one for which this Determination, TSA policy, or a binding collective bargaining agreement in effect consistent with this Determination allows for personal representation; and (b) the covered employee requests, in writing, that the Union representative serve as his/her personal representative.
 - a. The exclusive representative must provide a Union representative to serve as a personal representative for a covered employee who requests it if that covered employee is a dues-paying member of the Union.
 - b. The exclusive representative may provide a Union representative to serve as a personal representative for a covered employee who is not a dues-paying member of the Union but is not obligated to do so.
 - c. A Union representative acting as a personal representative under this section must, unless he or she is a TSA employee, sign an SSI non-disclosure agreement and will be considered a covered party under 49 C.F.R. § 1520.7.

3. The exclusive representative has the right to have a Union representative present at formal discussions consistent with TSA policy.
4. The exclusive representative has the right to be notified of any changes to Federal Government-wide rules or regulations applicable to covered employees.
5. The Union must bargain in good faith on behalf of the covered employees with the intent to reach agreement over the issues subject to collective bargaining as set forth in Section III.B.7 and not excluded from collective bargaining under Section III.B.8.
6. The Union must not coerce, discipline, fine, or attempt to coerce a covered employee as punishment or reprisal or for the purpose of hindering or impeding the covered employee's work performance, productivity as a covered employee, or discharge of the covered employee's duties.
7. The Union must not participate in or otherwise encourage a strike of covered employees or assert the right to strike. This prohibition applies to work slowdowns, concerted call-outs, or any other conduct viewed as a collective job action.
8. The exclusive representative must maintain respectful and constructive communication on work issues and concerns with TSA employees and management and act in a manner characterized by cooperative problem-solving approaches to raising, addressing, and seeking resolution of issues.
9. The Union has the right to jointly select with TSA the eligible covered employees to serve as members on the National Advisory Council (NAC) and the Diversity Advisory Council (DAC), consistent with the process that TSA establishes for joint selection. The Union has the right to provide input on the joint selection process. The provision of the Union's input will not delay TSA's implementation of the process.

D. TSA Management:

1. TSA management must bargain in good faith with the intent to reach agreement over the issues subject to collective bargaining as set forth in Section III.B.7 and not excluded from collective bargaining under Section III.B.8.
2. TSA management officials, including supervisors, must act in a manner consistent with the representational framework set forth in this Determination. TSA prohibits any form of reprisal or retaliation against a TSA management official for acting in a manner consistent with the representational framework set forth in this Determination. Retaliation or threats of retaliation against a TSA management official for acting in a manner consistent with this Determination will constitute grounds for corrective or disciplinary action.
3. TSA management may maintain and manage terms and conditions of employment for covered employees until such time as the terms and conditions may be changed

through a binding collective bargaining agreement in effect consistent with this Determination.

4. TSA management may make changes to the terms and conditions of employment for covered employees unless and until a term or condition is superseded by a binding collective bargaining agreement provision in effect consistent with this Determination that addresses that particular term or condition.
5. Where a term or condition of employment for covered employees is excluded from collective bargaining in Section III.B.8, TSA may change that term or condition irrespective of any collateral impact that change does or might have on a matter within the scope of collective bargaining in Section III.B.7, including any collateral impact that change does or might have on a provision of a binding collective bargaining agreement in effect consistent with this Determination.
6. TSA management may engage with any covered employee or covered employees generally on any matter or deal with any employee group on issues affecting covered employees except that TSA will not engage in collective bargaining resulting in a binding collective bargaining agreement with any entity other than the exclusive representative.
7. TSA management must maintain respectful and constructive communication on work issues and concerns with TSA employees, upper TSA management, and Union representatives, and act in a manner characterized by cooperative problem solving approaches to raising, addressing, and seeking resolution of issues.
8. TSA will determine the number of covered employees who will serve as members on the NAC and DAC. TSA will also determine the eligibility requirements for membership on the NAC and DAC and whether a covered employee meets those eligibility requirements. If the Union does not participate in the joint selection process, TSA may proceed with the selection of covered employees for the NAC and DAC.

V. Resolution Processes:

A. General Principles:

1. All employee issues and concerns can be raised with confidence that they will be heard and, if possible, addressed, without fear of retaliation;
2. TSA employees deserve a resolution system that is fair, transparent, and efficient; and
3. TSA's mission requires that disputes, including those related to union activity and collective bargaining, be resolved quickly, efficiently, and collaboratively and avoid protracted and potentially acrimonious litigation. To meet these requirements:

- a. Any claims raised must be sufficiently identified such that the parties and the TSA National Resolution Center (NRC) know the precise issue(s) being raised at the initiation of the resolution process; and
- b. The parties must exhaust each phase or step of the TSA Unitary Dispute Resolution System (UDRS) before the NRC will permit the claim to advance to the next UDRS phase or step.

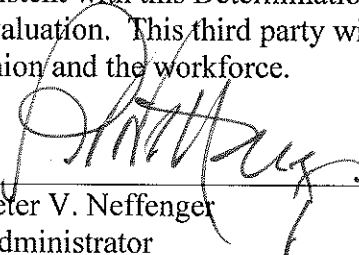
B. The TSA Unitary Dispute Resolution System (the UDRS):

1. The UDRS covers TSA management, covered employees, and the Union as set forth in this Determination and TSA policy. TSA non-covered employees are governed by the UDRS as set forth in TSA policy.
2. The NRC is an internal, impartial entity responsible for administering and implementing the UDRS. The NRC will administer and implement the UDRS in accordance with this Determination and TSA policy.
 - a. The NRC has the authority to accept and process those claims that fall within the scope of the UDRS. The NRC will dismiss claims that do not meet the procedural (e.g., timeliness) and/or jurisdictional (e.g., eligibility) requirements of the UDRS, and it will not permit parties' claims to advance through the UDRS if one party or both parties fail to meet respective obligation(s) to resolve disputes quickly, efficiently, and collaboratively.
 - i. The UDRS will contain a reconsideration process to allow the filing party to request that the NRC reconsider the NRC's dismissal of a claim or the NRC's decision not to advance a claim through the UDRS.
 - ii. There will be no third-party review of the NRC's dismissal of a claim or the NRC's decision not to advance a claim through the UDRS.
 - b. The NRC will enter all claims filed and processed in the UDRS into a database by location and subject. This database will record the timeliness of steps in the process. The NRC will review this database on a regularly scheduled basis to ensure accountability and to identify systemic issues and potential locations of concern for TSA management.
3. The UDRS will include both interest-based and neutral, third party rights-based options as set forth in TSA policy. The core principles, objectives, and requirements of the UDRS are set forth in Section V.C below. The UDRS will not be subject to the collective bargaining process.
 - a. The exclusive representative is encouraged to provide input, including any suggestions, comments, and/or concerns, to the NRC regarding the TSA policy governing the UDRS as applied to covered employees. The NRC will give the exclusive representative an opportunity to provide its input on changes to the TSA policy governing the UDRS.

- b. The NRC will consider the exclusive representative's input and will provide a written response to the Union regarding whether the NRC will incorporate the Union's input into TSA policy.
 - c. If the NRC does not incorporate the Union's input into TSA policy, the NRC will explain in writing the basis for its decision.
 - d. While the NRC will consider the Union's input, the provision of the Union's input will not delay the implementation of any changes to the TSA policy governing the UDRS.
4. The substance or content of the UDRS and/or the TSA policy governing the UDRS may not be grieved. The application of the TSA policy governing the UDRS to individual matters may be grieved, consistent with TSA policy. The NRC's dismissal of a claim and the NRC's decision not to advance a claim through the UDRS may not be grieved but may be raised in the reconsideration process provided in Section V.B.2.a.i above.
- C. Core Principles, Objectives, and Requirements for the UDRS:
1. It is in the interest of all TSA employees, including covered employees and TSA management, that issues and concerns be raised and resolved as close to the origin of the issue or concern as possible by the affected employees or groups themselves.
 2. The UDRS will include provisions designed to ensure that disputes are addressed fairly, efficiently, and, when not involving a confidential resolution process, transparently.
 3. The UDRS will provide that the first step in addressing issues, as appropriate, will be an interest-based conversation between or among the employees or groups closest to the issue. Employees are encouraged to engage in problem-solving within their chain of supervision.
 4. TSA policy will define the scope of claims that may be filed in the UDRS consistent with this Determination. Claims that must be raised in another forum, such as Workers' Compensation claims or Whistleblower or discrimination complaints, cannot be filed in the UDRS.
 5. If a covered employee chooses to grieve or file in another forum regarding an employment action, such as filing an Equal Employment Opportunity complaint, a Merit Systems Protection Board appeal, or a TSA Office of Professional Responsibility Appellate Board appeal, a grievance cannot be filed in the UDRS regarding the same employment action.
 6. Recognizing that some issues are not amenable to localized solutions, the UDRS will include processes to ensure that such issues can be raised and, when possible, resolved effectively.

7. Recognizing that the resolution of some issues will, despite the parties' best efforts, require neutral assistance, the UDRS will, in appropriate circumstances, provide neutral assistance to enable the parties to reach interest-based solutions. Such interest-based resolution assistance may include, as appropriate, conflict coaching, facilitated interest-based discussions, mediation, and other neutral third-party approaches that assist parties to raise and resolve issues, concerns, and disputes themselves.
8. Recognizing that some disagreements will require a rights-based decision made by a neutral decision-maker, the UDRS will include a rights-based system as set forth in TSA policy.
9. The UDRS will include third-party review for final decisions by panels selected from a roster of neutrals, with backgrounds in both security and collective bargaining, who are agreed upon by TSA management and the exclusive representative. Consistent with TSA policy, these panels will hear the following issues when national in scope:
 - a. Issues that arise during the collective bargaining process:
 - i. Failure to agree on ground rules;
 - ii. Allegations of a party's failure to bargain in good faith as set forth in Section IV.C.5 for the Union and Section IV.D.1 for TSA management; and
 - iii. Failure to agree on terms of the collective bargaining agreement.
 - b. Allegations that:
 - i. TSA management or the exclusive representative violated covered employees' rights as set forth in Section IV.A of this Determination;
 - ii. TSA management or the Union failed to act in a manner consistent with its respective rights, roles, and responsibilities as set forth in Section IV.C for the Union and Section IV.D for TSA management; and
 - iii. TSA management or the exclusive representative failed or refused to comply with a binding collective bargaining agreement.
- D. Within 12 months of the date of this Determination, TSA will identify an expert independent third party to evaluate the entire UDRS. The expert independent third party will evaluate the UDRS processes consistent with this Determination. The exclusive representative will participate in this evaluation. This third party will produce a report for TSA that will be shared with the Union and the workforce.

12 August 2016
Date


Peter V. Neffenger
Administrator