



**TESTIMONY OF NTEU NATIONAL PRESIDENT
COLLEEN M. KELLEY**

ON

**Putting People First: A Way Forward for the Homeland
Security Workforce**

BEFORE

**THE HOUSE HOMELAND SECURITY COMMITTEE
SUBCOMMITTEE ON MANAGEMENT, INTEGRATION
AND OVERSIGHT**

**311 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C.
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Chairman Carney, Ranking Member Bilirakis, I would like to thank the subcommittee for the opportunity to testify on the current state of affairs regarding personnel practices and workforce challenges at the Department of Homeland Security (DHS). As President of the National Treasury Employees Union (NTEU), I have the honor of representing over 150,000 federal employees, 24,000 of whom are Customs and Border Protection (CBP) employees at the Department of Homeland Security.

DHS PERSONNEL SYSTEM AUTHORIZED BY TITLE 5, CHAPTER 97

When Congress passed the Homeland Security Act in 2002 (HSA), it granted the new department very broad discretion to create new personnel rules. It basically said that DHS could come up with new systems as long as employees were treated fairly and continued to be able to organize and bargain collectively.

It was unfortunate that after two years of “collaborating” with DHS and OPM on a new personnel system for DHS employees, NTEU was extremely disappointed that the final regulations fell woefully short on a number of the Homeland Security Act’s (HSA) statutory mandates. The most important being the mandates that DHS employees may, “organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them,” (5 U.S.C. 9701(b)(4)) as well as the mandate that any changes to the current adverse action procedures must “further the fair, efficient and expeditious resolutions of matters involving the employees of the Department.” (5 U.S.C. 9701(f)(2)(C)).

Because the final personnel regulations failed to meet the statutory requirements of the HSA, NTEU, along with other federal employee unions, filed a lawsuit in Federal court. On August 12, 2005, the federal district court ruled the labor-management relations and appeals portions of the DHS final personnel regulations illegal and enjoined their implementation by DHS. DHS appealed the district court’s decision to the U.S. Court of Appeals for the District of Columbia Circuit. In June 2006, the Appellate Court upheld the lower court decision and DHS declined to appeal the ruling to the Supreme Court.

Much to NTEU’s consternation, on March 7, 2007, DHS announced that it would put into effect portions of its compromised personnel system, formerly known as MaxHR, but now called the Human Capital Operations Plan. NTEU was very grateful that on March 28, 2007, the House Homeland Security Committee acted. **The Committee approved an amendment offered by Subcommittee Chairman Carney to the FY 2008 DHS Authorization bill that repeals the DHS Human Resources Management System. H.R. 1684, the DHS Authorization legislation was approved by the House of Representatives on May, 11, 2007, but was not considered by the Senate.**

Despite Congress’ clear intent to stop implementation of the failed DHS Human Resources Management System, DHS continued to persist in implementing these compromised personnel regulations. Finally, Congress approved a FY 2009 DHS Appropriations bill that prohibits the department from using any funds to implement a new personnel system for rank and file employees. Because of this Congressional

prohibition, DHS finally abandoned all efforts to implement all regulations promulgated under Title 5, Chapter 97 in October 2008. The House has voted once already to repeal the authorization of Title 5, Chapter 97. **NTEU urges Congress to enact the Chapter 97 repeal this year.**

TRANSPORTATION SECURITY ADMINISTRATION

The Aviation and Transportation Security Act (ATSA), enacted in November 2001, removed screening responsibility from air carriers and the private sector contractors who conducted screening for them and placed this responsibility with the Transportation Security Administration (TSA). As a result, TSA hired and deployed about 55,000 federal passenger and baggage Transportation Security Officers (TSO)—formerly known as screeners—to more than 400 airports nationwide based largely on the number of screeners the air carrier contractors had employed. Since August 2002, TSA has been prohibited by statute from exceeding 45,000 full-time equivalent positions available for screening.

Congress' intention in federalizing the screening workforce was to replace a poorly trained, minimum-wage private contract screening workforce with professional, highly trained security screening officers. Congress, however, included in ATSA, Section 111(d) that codified as a note to 49 U.S.C 44935, the following:

“Notwithstanding any other provision of the 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 function of the Under Secretary under section 44901 of title 49, United States Code. The Under Secretary shall establish levels of compensation and other benefits for individuals so employed.”

This section permitted the establishment of a federal personnel management system that is unique to TSOs. The Federal Labor Relations Authority construed Section 111(d) as granting unfettered discretion to TSA to determine the terms and conditions of employment for federal screener personnel. Accordingly, a directive issued by then Under Secretary James Loy on January 8, 2003 barred screeners from engaging in collective bargaining.

The goal of providing screeners with adequate pay, benefits and training and thereby creating a professional and dedicated TSO workforce has been undermined by capricious and arbitrary management and the denial of the most basic workplace rights.

To date, TSA's basic management programs have been massive failures. The training and certification program, performance appraisal system, and health and safety programs all lack accountability and therefore lack credibility with employees. The Transportation Security Officers, who put themselves on the line every day, at every airport, deserve better than what they've endured so far. TSA is an agency with the

lowest pay in the government. Not surprisingly, it also has the lowest morale. Lack of oversight and accountability has resulted in one of the highest voluntary attrition rates in the entire federal government as well as the highest workplace injury rates.

Pay for Performance

Under TSA's pay-for-performance system, known as PASS, employees have no basis to accurately predict their salaries from year to year. They have no way of knowing how much of an annual increase they will receive, or whether they will receive any annual increase at all. Every year, the amount of points required to receive a merit increase change, as does the percentage of each category. Scores are routinely changed on the whim of management. The PASS system relies almost entirely on the integrity, work ethic and writing ability of the supervisor who gives the points.

PASS is an example of the "worst of all worlds" kind of system – not a statutorily set system like the GS one, and no collective bargaining over pay, nor over anything. So, has this pay-for-performance system aided in recruitment and retention or motivation? It absolutely has not. It is a major contributor to the fact that TSA has the highest turnover rate in the federal government. Has it motivated employees to better achieve the agency mission? Certainly not. Employees at TSA are struggling to make ends meet with an average salary of \$30,000, uncertain work conditions and no knowledge as to whether they will receive a pay raise or even what the expectations are to get one, under the current system. While they do a remarkable job with insufficient training and feedback, it is hard for them to focus on the larger mission goals.

Last fall, Lockheed/Martin was awarded a contract to administer human resources systems at TSA. It already plays a large part in the inept PASS system. While airport screeners in charge of vital security needs rarely make enough to afford health insurance, a contractor with an abysmal record of deeds accomplished at the same agency was awarded a new \$1.2 billion contract. This money would be much better spent on increasing staffing and pay for TSOs.

PASS is in disarray. The imagery used for training, when it actually occurs, is faulty. If a TSO fails a test, they are not told why. It doesn't measure the appropriate skills. If you do fail, there is no training to improve your skills. Still, your merit increase is based on these scores, scores that can change between the time the tester hands them in to a supervisor, and the supervisor records them. Part of your PASS score is based on "collateral duties". The supervisor decides who gets these duties, adding another layer of favoritism to the personnel system. Every year, when the PASS payouts come out, our office is flooded with calls from TSOs confused and disappointed with their scores.

With roughly 8,000 of the approximately 40,000 member TSA workforce leaving their jobs each year, TSA is incurring astronomical and unnecessary costs of training, recruiting and hiring and lost productivity. This critical workforce is in flux and I see no advantage to experimenting further with their pay. The PASS system is not fair, credible or transparent. It is not achieving the success to justify it, and it is a major contributing

factor to the agency's double-digit attrition. The PASS system should be eliminated and TSOs should be put under the General Schedule pay system.

The General Schedule

Critics of the General Schedule are often confused about the very nature of that system, or sometimes, as in the Partnership for Public Service's report on "Elevating our Federal Workforce", when they think they're criticizing the GS, they're really complaining about other things – federal managers who won't manage, pay that's too low, difficulty in hiring. These are not GS problems, nor are they problems that can be fixed with a new performance management system.

I am a big believer in setting meaningful goals and then figuring out how to reach those goals. It seems to me that we need to step back in this discussion about pay systems and personnel systems and ask – what are our goals? I have a couple: 1) Does it help recruit and retain the best people for the jobs? And, 2) Does it help motivate employees to better achieve the agency mission? Agencies that follow the General Schedule have been successful in both these goals. Agencies that have pay-for-performance systems have not.

The General Schedule is a structured system. It has rules, standards and evaluations which must be written. It has both merit and market components – with grade and career ladder promotions subject to merit standards. There is limited ability for favoritism, discrimination or other non-merit determinations to come into play.

But there is also flexibility. Non-performers can be denied merit pay increases and outstanding performers can be given many rewards, including quality step increases, additional leave, and retention and recruitment bonuses. Yet we see a pattern of managers' inability to follow the rules and work within the GS system. If managers currently have trouble with the GS system, it does not make sense to go to a *more subjective system*. The GS system is a performance-based system that works. Until we see actual success stories of pay-for-performance systems, and there have been none in any of agencies represented by NTEU, NTEU will continue to oppose them.

For those who argue that raises are automatic within the GS system and say the only thing that counts is *being there*, I take issue. An employee's supervisor must certify that the employee is performing the job up to standard. If not, the employee's step increase can be withheld and disciplinary action can follow. If there's a problem here, it's that the supervisor is not doing his or her job. Can we expect them to do a better job with a much greater task, the kind of task that is involved in each and every one of the pay-for-performance systems presently in the government? It took a very long time to build a non-partisan, professional civil service that is envied around the world. There has been no evidence so far that it needs to be changed. Rather than spend money and precious resources fixing what isn't broken, I suggest we put that money and time into developing a better hiring plan for the federal government and more training for managers to take advantage of what already exists.

Collective Bargaining Rights for TSOs

In the 110th Congress, both the House and Senate recognized the failings of the TSA personnel system that prohibits collective bargaining and voted to repeal Section 111(d) of ATSA. Unfortunately, the ATSA repeal provision did not make it into the final version of the 9/11 Commission bill. Reversing this unequal treatment of TSOs will help restore morale and strengthen mission and personnel dedication at the Department of Homeland Security.

There is little dispute that TSA is a hostile work environment. Our union officers have been demoted or moved to less-traveled areas for trying to get disputes resolved. People are injured on the job and told to stay home or even told to find a different place to work. TSOs are forced to take annual leave when they clearly are eligible for Family and Medical Leave Act leave. Jobs are not posted; they are filled by TSOs friendly to management. TSOs routinely are at the airport 11 to 14 hours a day, but get paid for 8. Staffing levels at some airports are so low that TSOs are working extra shifts, not getting breaks, and working on their days off.

Concerns voiced by the former administration, that collective bargaining would limit management flexibility at TSA have been totally discredited by the record of the organized workforce at other DHS bureaus and agencies. Rather than inhibit management, collective bargaining agreements set procedures for work assignments and duties that lead to stability in the workplace. The result, then, is a trained and committed workforce to enhance the nation's protection.

In conclusion, the inherent arbitrariness of the PASS system can only be solved by moving TSOs to the General Schedule with full bargaining rights as enjoyed by their fellow civil servants.

IMPEDIMENTS TO MISSION ACCOMPLISHMENT

The second part of my testimony addresses the previous administration's DHS staffing and personnel policies that have deleteriously affected employee morale and threaten the agency's ability to successfully meet its critical missions.

ONE FACE AT THE BORDER INITIATIVE

As part of the establishment of the Bureau of U.S. Customs and Border Protection (CBP) in March 2003, DHS brought together employees from three departments of government-- Treasury, Justice and Agriculture to operate at the 327 ports of entry. On September 2, 2003, CBP announced the One Face at the Border initiative. The initiative was designed to eliminate the pre-9/11 separation of immigration, customs, and agriculture functions at US land, sea and air ports of entry. Inside CBP, three different inspector occupations --Customs Inspector, Immigration Inspector and Agriculture Inspector were combined into a single inspectional position--the CBP Officer.

The priority mission of the CBP Officer is to prevent terrorists and terrorist weapons from entering the U.S., while simultaneously facilitating legitimate trade and travel—as well as upholding the laws and performing the traditional missions of the three legacy agencies, the U.S. Customs Service, the Immigration and Naturalization Service (INS) and the Animal, Plant and Health Inspection Service (APHIS).

This change in job description and job duties established by the One Face at the Border initiative resulted in the Herculean task of training, retraining and cross training over 18,000 newly created CBP Officers. It became clear after several months that Agriculture Specialists job duties and background was significantly unique to establish a CBP Agriculture Specialist job series 401, separate from the CBP Officer job series 1895.

CBP saw its One Face at the Border initiative as a “force multiplier” a means to “increase management flexibility” without increasing staffing levels. According to CBP, “there will be no extra cost to taxpayers. CBP plans to manage this initiative within existing resources. The ability to combine these three inspectional disciplines and to cross-train frontline officers will allow CBP to more easily handle projected workload increases and stay within present budgeted levels.” This has not been the case. The knowledge and skills required to perform the expanded inspectional tasks under the One Face at the Border initiative have been diluted while at the same time increasing the workload of the CBP Officer. The CBP Officer is becoming a generalist, rotating from seaport cargo inspection to land port vehicle processing to airport passenger processing without ever developing the specialized skill set that they had as legacy inspectors, and further undermining the nation’s security.

CBP STAFFING SHORTAGES

In 2006, Congress requested that the Government Accountability Office (GAO) evaluate the One Face at the Border initiative and its impact on legacy customs, immigration and agricultural inspection and workload. GAO conducted its audit from August 2006 through September 2007 and issued its public report, Border Security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation’s Ports of Entry (GAO-08-219), on November 5, 2007.

The conclusions of this report echo what NTEU has been saying for years:

- CBP needs several thousand additional CBP Officers and Agriculture Specialists at its ports of entry.
- Not having sufficient staff contributes to morale problems, fatigue, and safety issues for CBP Officers.
- Staffing challenges force ports to choose between port operations and providing training.
- CBP’s onboard staffing level is below budgeted levels, partly due to high attrition, with ports of entry losing officers faster than they can hire replacements.

According to GAO, “At seven of the eight major ports we visited, officers and managers told us that not having sufficient staff contributes to morale problems, fatigue, lack of backup support and safety issues when officers inspect travelers—increasing the

potential that terrorists, inadmissible travelers and illicit goods could enter the country.” (See GAO-08-219, page 7)

“Due to staffing shortages, ports of entry rely on overtime to accomplish their inspection responsibilities. Double shifts can result in officer fatigue...officer fatigue caused by excessive overtime negatively affected inspections at ports of entry. On occasion, officers said they are called upon to work 16-hour shifts, spending long stints in primary passenger processing lanes in order to keep lanes open, in part to minimize traveler wait times. Further evidence of fatigue came from officers who said that CBP officers call in sick due to exhaustion, in part to avoid mandatory overtime, which in turn exacerbates the staffing challenges faced by the ports.” (See GAO-08-219, page 33)

According to CBP, CBP Officers have "Twin Goals" in doing their job - anti-terrorism and facilitating legitimate trade and travel. CBP's priority mission is preventing terrorists and terrorist weapons from entering the United States, while also facilitating the flow of legitimate trade and travel. CBP's emphasis on reducing wait times, however, without increasing staffing at the ports of entry creates a challenging work environment for the CBP Officer.

On the one hand, CBP Officers are to fully perform their inspection duties, yet at all times they are made aware by management of wait times. In land port booths, wait times are clearly displayed. Primary inspections at land ports are expected to be conducted in less than one minute. Travelers routinely spend about 45 seconds at U.S.-Canadian crossings during which CBP Officers have to determine if a person is a U.S. citizen or alien, and if alien, whether the alien is entitled to enter the U.S. At airports, all international arrivals are expected to be cleared within 45 minutes or a visual alert is displayed at headquarters and local management is notified. CBP's website posts wait times at every land port and allow travelers to check airport wait times by location.

The emphasis on primary passenger processing and reducing wait times results in limited staff available at secondary to perform vehicle, baggage and cargo inspections referred to them. NTEU has noted the diminution of secondary inspection in favor of passenger facilitation at primary since the creation of DHS.

CBP Agriculture Specialists

In 2008, NTEU was certified as the labor union representative of CBP Agriculture Specialists as the result of an election to represent all Customs and Border Protection employees that had been consolidated into one bargaining unit by merging the port of entry inspection functions of Customs, INS and the Animal and Plant Inspection Service as part of DHS' One Face at the Border initiative.

In order to assess CBP Officer and CBP Agriculture Specialists staffing needs, Congress, in its FY 07 DHS appropriations conference report, directed CBP to submit by January 23, 2007 a resource allocation model for current and future year staffing requirements. In July 2007, CBP provided GAO with the results of the staffing model.

“The model’s results showed that CBP would need up to several thousand additional CBP officers and agricultural specialists at its ports of entry.” (See GAO-08-219, page 31) CBP has determined that data from the staffing model are law enforcement sensitive and has not shared this data with NTEU.

According to GAO, with the merger of the three agencies’ inspection forces, there are now approximately 18,000 CBP Officers currently employed by CBP. Based on the expanded mission of CBP Officers, **NTEU believes that at least 22,000 CBP Officers would be needed to have a robust and fully staffed force at our ports of entry.**

According to GAO-08-219 page 31, CBP’s staffing model “showed that CBP would need up to several thousand additional CBP Officers and agriculture specialists at its ports of entry.” **And GAO testimony issued on October 3, 2007 stated that, “as of mid-August 2007, CBP had 2,116 agriculture specialists on staff, compared with 3,154 specialists needed, according to staffing model.”** (See GAO-08-96T page 1.) NTEU recommends that CBP hire additional CBP Agriculture Specialists to comply with its own staffing model.

Congressional Appropriators added FY 2009 funds to hire 1,373 U.S. Customs and Border Protection Officers and CBP Agriculture Specialists at the ports of entry — an increase of 834 beyond those requested by the Bush Administration in its FY 2009 budget. According to CBP February 2009 Snapshot summary of CBP facts and figures, CBP employs 19,726 CBP Officers and 2,277 CBP Agriculture Specialists. **NTEU urges Congress to authorize and fund the additional 2,274 CBP Officers and the 880 CBP Agriculture Specialist needed according to CBP’s own staffing model.**

Also, NTEU continues to have concerns of CBP’s stated intention to change its staffing model design to reflect only allocations of existing resources and no longer account for optimal staffing levels to accomplish their mission.

Finally, NTEU strongly supports Section 805 of S. 3623, the FY 2009 DHS Authorization bill introduced in the Senate last Congress, that through oversight and statutory language, makes clear that the agricultural inspection mission is a priority and increase CBP Agriculture Specialist staffing, impose an Agriculture Specialist career ladder and specialized chain of command. H.R. 3623 in Section 815 also extends CBP Officer enhanced retirement to their ranks and to CBP Seized Property Specialists.

CBP Seized Property Specialists

CBP Seized Property Specialists are uniformed and armed GS-1801 Officers responsible and accountable for accepting, securing, storing, maintaining and disposing of dangerous drug evidence. Seized Property Specialists are responsible for all seized personal and real property, including controlled substances, currency and firearms, by Border Patrol Agents and Customs and Border Protection Officers. The approximately 125 CBP Seized Property Specialists are the keepers of millions of dollars worth of

sensitive evidence and other contraband until final disposition. Transportation to destruction facilities and destruction of seized property is an integral part of their jobs.

When CBP was created in March 2003, it was decided that all CBP Officers would be placed under one compensation system both for base pay and for overtime and premium pay. The system is the Customs Officers Pay Reform Act (COPRA) system and applies to all CBP Officers.

CBP Seized Property Specialists comply with the same qualification standards and requirements as CBP Officers do. They qualify in handgun proficiency, undergo self defense tactics training and learn defensive and restraint techniques every trimester. They undergo the similar specialized training and are issued the same equipment. Yet Seized Property Specialists are not under the COPRA overtime and premium pay system.

Also, as you know, On December 26, 2007, the President signed the 2008 Consolidated Appropriations Act, that included an enhanced retirement benefit for CBP officers. The enhanced retirement benefit (section 535 of the Act) is similar to that provided for law enforcement officers. The provisions of this enhanced retirement package became effective on July 6, 2008. Again, Seized Property Specialists comply with the same qualification standards and requirements as CBP Officers do. Yet, CBP Seized Property Specialists are not covered by the new enhanced retirement benefit.

On behalf of the CBP Seized Property Specialists (GS-1801 series) assigned around the nation, NTEU has requested that the enhanced retirement provision and that COPRA be extended to all Seized Property Specialists at CBP. Both these actions will result in a more unified CBP workforce. This discrepancy could be resolved administratively by the Department. If the Department does not act, NTEU will seek a legislative remedy. The Senate Committee included a legislative extension of enhanced retirement benefits to SPS in it FY 2009 authorization bill, H.R. 3623, Section 815.

CBP Trade Operations Staffing

CBP has the dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade; collecting import duties; and enforcing U.S. trade laws. Customs revenues are the second largest source of federal revenues that are collected by the U.S. Government. Congress depends on this revenue source to fund federal priority programs. Trade volume is growing exponentially, while CBP trade enforcement staffing remains stagnant. In 2005, CBP processed 29 million trade entries and collected \$31.4 billion in revenue. According to a GAO report on Customs Revenue (GAO-07-529), CBP collected nearly \$30 billion customs duties in FY 2006, but concluded that CBP's shift in mission contributed to reduced focus and resources devoted to customs revenue functions. According to most recent budget projections, in 2009 the estimated revenue collected (Customs duties) is projected to be \$24 billion—a drop of over \$6 billion in revenue collected.

Section 412(b) of the Homeland Security Act of 2002 (P.L. 107-296) mandates that “the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those functions...performed by the United States Customs Service...on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

According to the Trade Resource Allocation Model (RAM) required by Congress in the SAFE Port Act of 2006 and dated July 6, 2007, CBP needs 1,100 Import Specialists on board by FY 2010 to meet its trade facilitation mission. NTEU asks the Committee to carefully scrutinize the 2007 Trade RAM and a forthcoming 2009 RAM also authorized by the SAFE Ports Act when determining CBP trade function funding needs.

NTEU urges the Committee to ensure that CBP trade enforcement personnel is increased to staffing levels sufficient to ensure effective performance of customs revenue functions as determined by CBP in its own July 2007 Trade Resource Allocation Model.

TRAINING ISSUES

NTEU’s CBP members have told us that CBP Officer cross-training and on-the-job training is woefully inadequate. In addition, staffing shortages force managers to choose between performing port operations and providing training. In these instances, it is training that is sacrificed. As you know, I testified before this Subcommittee on the inadequacy of CBP training at a June 19, 2007 hearing entitled “Ensuring We Have Well-Trained Boots on the Ground at the Border.” Because little has changed since that hearing, I refer you to that testimony with respect to continuing deficiencies in CBP employee training program.

I do want to update you on a new development that once again shows how shortchanging, in this case, new CBP Officer training can be attributed to staffing shortages. In January 2008, I testified at a field hearing in El Paso about staffing shortages and increasing wait times at the land port. Shortly nine additional pedestrian lanes and two more passenger lanes will be opened at the Paso del Norte Bridge. It is NTEU’s understanding that the El Paso Field Office is considering eliminating post academy training for CBP Officers by sending FLETC graduates directly from the academy to work the line at the POE.

Last year, El Paso eliminated the post academy training for cargo inspection. Presently, post academy training in El Paso consists of six (6) weeks of training in passenger processing and six (6) weeks in passport control. If this change does occur, it most likely due to El Paso lacking sufficient personnel to staff, not only the existing border crossings, but also the new lanes. Lack of on the job training for new hires not only jeopardizes the career success, but possibly the health and safety of other employees.

RECRUITMENT AND RETENTION ISSUES

Reported staffing shortages are exacerbated by challenges in retaining staff, contributing to an increasing number of vacant positions nationwide. “CBP’s onboard staffing level is below its budgeted level...the gap between the budgeted staffing level and the number of officers onboard is attributable in part to high attrition, with ports of entry losing officers faster than they can hire replacements. Through March 2007, CBP data shows that, on average, 52 CBP Officers left the agency each 2-week pay period in fiscal 2007, up from 34 officers in fiscal year 2005...Numerous reasons exist for officer attrition.” (See GAO-08-219, page 34.)

Currently CBP is seeking 11,000 new recruits for both Border Patrol and the Office of Field Operations, however, the majority of these CBP Officer new hires are to keep up with attrition, not to address CBP Officer optimal staffing levels as determined by CBP’s own Resource Allocation Model.

CBP Exclusive Use of Federal Career Intern Program

In 2000, the Office of Personnel Management issued regulations establishing the Federal Career Intern Program (FCIP). CBP now uses FCIP authority as its exclusive mean of hiring new CBP Officers. The FCIP was originally created as a limited special focus hiring program to provide formally structured two-year training and development “internships” as a strategic recruitment tool. Since then, however, because OPM placed very few restrictions on the program, its use by agencies has increased so dramatically that it amounts to a frontal assault on the competitive examination process as the primary method of hiring for competitive civil service positions. NTEU believes that there is no justification for FCIP’s broad exemption from the competitive examination and selection requirements fundamental to the federal civil service.

As established by OPM, the FCIP allows agencies to hire “interns” for almost any entry-level position. FCIP vacancies are not required to be posted for internal candidates or on OPM’s USAJOBS web site. The FCIP authority threatens to undermine fundamental merit systems principles. These principles require that selection and advancement be determined on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity. The practical effect for new CBP hires is that their probationary period is unnecessarily expanded from one year to two years.

Most importantly for all of us who support our war veterans, by using the FCIP exemption, CBP evades veteran’s preference hiring as established by **Uniformed Services Employment and Reemployment Rights Act.** NTEU recently participated in a successful challenge to the legality of the excepted service hiring allowed under the FCIP. The petitioner, a 30% disabled veteran who had applied for an auditor position in the Department of Defense, was passed over in favor of two non-preference eligible applicants who were hired under the FCIP.

Finally, existing federal programs that have never been widely implemented at DHS, such as the telework and student loan repayment programs have shown proven success in recruiting and retaining federal workers. Congress should inquire as to why these programs that also contribute to higher employee morale are not personnel priorities at DHS. Congress should also ensure that CBP embraces existing successful retention programs such as the NTEU-negotiated CBP Officer Foreign Language Award Program and expands its use and awards.

NTEU RECOMMENDATIONS

DHS employees represented by NTEU are capable and committed to the varied missions of the agency from border control to the facilitation of trade into and out of the United States. They are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. The American public expects its borders and ports be properly defended.

Congress must show the public that it is serious about protecting the homeland by:

- Granting collective bargaining rights to TSOs and putting TSOs under Title 5;
- repealing Title 5, Chapter 97, the compromised DHS personnel system;
- fully funding CBP staffing needs as stipulated in CBP's own staffing models;
- ending the One Face at the Border initiative;
- reestablishing CBP Officer and CBP Agriculture Specialist inspection specialization at our 327 ports of entry; and
- extending LEO coverage to all CBP Seized Property Specialists and CBP Agriculture Specialists, and
- end the use of the Federal Career Intern Program as the exclusive hiring authority for CBP employees.

I urge each of you to visit the land, sea and air ports of entry in your home districts. Talk to the TSOs, CBP Officers, canine officers, agriculture specialists and trade enforcement specialists there to fully comprehend the jobs they do and what their work lives are like.

Again, I would like to thank the committee for the opportunity to be here today on behalf of the 150,000 employees represented by NTEU.