

**DETERMINATION**  
**on**  
**TRANSPORTATION SECURITY OFFICERS and COLLECTIVE BARGAINING**

**Introduction**

Under the legislation that created TSA, the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, the TSA Administrator has 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. As such, today I issue the 2022 Determination on Transportation Security Officers and Collective Bargaining (Determination), superseding and replacing the 2019 Determination (as modified) in its entirety. This new Determination is consistent with the policies set forth in Executive Order 14025, *Worker Organizing and Empowerment* (Apr. 26, 2021)<sup>1</sup>, in support for worker power, worker organizing, and collective bargaining, as well as the Secretary of Homeland Security’s June 3, 2021 Memorandum *Supporting the TSA Workforce Through Improving the Transportation Security Officer Employment Experience* (“June 3 Memorandum”) directing certain changes to the TSA personnel management system.<sup>2</sup> This Determination also reflects TSA’s strategic priority to “Commit to our People” recognizing that TSA’s dedicated employees are critical to the success of our mission.

**Labor Framework**

Section 1. Effective as set forth below, and as provided for under this Determination, TSA incorporates the provisions of Chapter 71 of Title 5 of the United States Code, and its implementing regulations for bargaining unit employees, the exclusive representative, and TSA management.

Section 2. “Bargaining unit employees”<sup>3</sup> are defined as the 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), and as stated in the June 29, 2011 Federal Labor Relations Authority (FLRA) *Certification of Representative*.<sup>4</sup>

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<sup>1</sup> Published at 86 Fed. Reg. 22829 (Apr. 29, 2021).

<sup>2</sup> The June 3 Memorandum provides, among other things, that TSA shall expand “collective bargaining ... to more closely mirror the rights and benefits that are provided to bargaining unit employees under Chapter 71 of Title 5 of the United States Code” and “permit collective bargaining at the national level to the same extent as permitted under Chapter 71 of Title 5, U.S. Code.”

<sup>3</sup> “Bargaining unit employees” may also be referred to as “covered employees.”

<sup>4</sup> As described by FLRA, the bargaining unit does not include: supervisors; management officials; professional employees; all other nonprofessional employees; confidential employees; employees engaged in personnel work in other than a purely clerical capacity; employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; and employees primarily engaged in investigation or audit functions relating to the work of individuals employed by TSA whose duties directly

Section 3. The labor organization certified by the FLRA on June 29, 2011 as the exclusive representative of full- and part-time non-supervisory personnel carrying out screening functions under 49 U.S.C. § 44901, as that term is used in § 111(d) of ATSA, shall continue to be the exclusive representative for bargaining unit employees unless modified by the FLRA in accordance with the procedures in Chapter 71 of Title 5 of the United States Code.

- a. The exclusive representative shall have all rights and privileges accorded to a labor organization certified as an exclusive representative as set forth in this Determination.
- b. Bargaining unit employees and TSA management shall have all applicable rights and responsibilities as set forth in this Determination.

Section 4. Any collective bargaining agreement in effect at the time of this Determination shall remain in full force and effect unless and until a new agreement is ratified by the exclusive representative and becomes effective; TSA management and the exclusive representative will engage in bargaining for a new collective bargaining agreement as set forth in Section 11 herein.

Section 5. Consistent with DHS Secretary Mayorkas' June 3 Memorandum, collective bargaining is:

- a. permitted at the national level to the same extent as permitted under Chapter 71 of Title 5 of the United States Code and as set forth in this Determination. For example, issues that are conditions of employment under Chapter 71 for Title 5 agencies are also conditions of employment under this Determination; and
- b. permitted at a local level no lower than a Federal Security Director's area of responsibility on the following issues:
  - a. access to TSA-controlled space for union representational activities;
  - b. lighting;
  - c. parking facilities and shuttle service;
  - d. break space for bargaining unit employees' use; and
  - e. lockers.

Section 6. Consistent with DHS Secretary Mayorkas' June 3 Memorandum, measures to address employee compensation are dependent on future appropriations and, therefore, are not addressed in this Determination. Accordingly, the TSA Administrator will retain sole and exclusive discretion over pay and policies affecting pay. This discretion includes, without limitation, policies, practices, and matters regarding bargaining unit employee compensation, including but not limited to pay upon appointment, promotion, reassignment, demotion, or pay based on any other consideration or personnel action. This does not include official time addressed in Section 7131 of Title 5. In other words, official time is negotiable to the same extent as it is negotiable under Section 7131 of Title 5.

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affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

Section 7. Any allotment by an employee for the deduction of dues to be paid to the exclusive representative shall be irrevocable for a period of one year and may only be revoked at yearly intervals thereafter, subject to such revocation procedures agreed upon by TSA and the exclusive representative.

Section 8. As jurisdiction on Federal courts cannot be conferred administratively, any provision of Chapter 71 or its implementing regulations regarding the Federal judiciary are not adopted by this Determination.

Section 9. As jurisdiction on FLRA cannot be conferred administratively, any provision of Chapter 71 or its implementing regulations regarding FLRA are not adopted by this Determination. The updated grievance and arbitration policy referenced below will apply pending the effective date of a negotiated Memorandum of Agreement between TSA and the exclusive representative regarding the grievance and arbitration processes for bargaining unit employees.

### **Transition**

Section 10. The new labor framework in this Determination requires careful planning and execution to ensure that TSA continues to meet its critical security mission. To ensure that TSA continues to meet its critical security mission while successfully meeting the needs of TSA employees, the exclusive representative, and TSA management, this Determination will be implemented as set forth below.

Section 11. As of the effective date of this Determination, the exclusive representative, bargaining unit employees, and TSA management will have the rights provided for under this Determination consistent with the following:

- a. As of the effective date of this Determination, any existing or pending TSA policy provision or guidance provision that is inconsistent with this Determination is hereby rescinded with respect to bargaining unit employees.
- b. As of the effective date of this Determination, TSA management and the exclusive representative can negotiate and enter into a Memorandum of Agreement regarding the grievance and arbitration processes for bargaining unit employees and a Memorandum of Agreement regarding official time for bargaining unit employees.
  1. Until a Memorandum of Agreement regarding the grievance and arbitration processes is in effect, TSA will have an updated grievance and arbitration policy for bargaining unit employees. These updates will:
    - a. Remove the exclusion of issues from the grievance process that were excluded from bargaining under the 2019 Determination;
    - b. Allow for third parties (arbitrators) to review dismissal determinations made by the National Resolution Center, as well as continue to review claims on the merits; and,

- c. Incorporate the joint recommendations regarding grievance procedures made by the Working Group convened under Section 1907 of the *TSA Modernization Act*.
  2. Pending grievances and third party review requests filed before the effective date of this Determination will be processed under the updated grievance and arbitration policy until it is superseded and replaced by a Memorandum of Agreement regarding the grievance and arbitration processes.
  3. The Memoranda of Agreement regarding the grievance and arbitration processes and official time will be effective on the date(s) agreed upon by TSA management and the exclusive representative.
  4. The Memoranda of Agreement regarding the grievance and arbitration processes and official time will be incorporated as articles into the new collective bargaining agreement negotiated under this Determination. These subjects may be further negotiated during the collective bargaining process.
- c. No later than 90 calendar days after the effective date of this Determination, TSA management and the exclusive representative will begin ground rules negotiations for a new collective bargaining agreement as set forth in this Determination. TSA management and the exclusive representative will begin collective bargaining for a new collective bargaining agreement at the national level as set forth in this Determination after the conclusion of ground rules negotiations.
  - d. No later than 120 calendar days after the effective date of this Determination, TSA management and the exclusive representative will be able, at the national level, to engage in mid-term bargaining that is commonly referred to as “impact and implementation bargaining.”
  - e. Effective once a new collective bargaining agreement that contains procedures for local bargaining is agreed to and in effect, TSA management and the exclusive representative will be able to engage in local bargaining as set forth in Section 5.b.
  - f. Effective 60 calendar days after the effective date of this Determination, the exclusive representative will have the rights to the following to the same extent as permitted under Section 7114 of Title 5:
    1. The opportunity to be represented at formal discussions; and
    2. The opportunity to be represented at any examination of a bargaining unit employee by a TSA representative in connection with an investigation if the bargaining unit employee reasonably believes that the examination may result in disciplinary action against the bargaining unit employee and the bargaining unit employee requests representation.

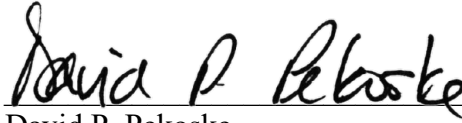
This time will allow for education and training to ensure proper and full implementation of these exclusive representative rights. In the interim, the exclusive representative will continue to have the rights to attend formal discussions and the examinations referenced above as set forth in TSA Management Directive No. 1100.77-5, *Formal Discussions*, and TSA Management Directive No. 1100.63-4, *Personal Representation During*

*Examination or Investigation*, as well as any rights under any collective bargaining agreement in effect.

Section 12. TSA may issue policy and/or guidance to assist in the implementation of this Determination provided that policy and/or guidance is consistent with this Determination.

December 30, 2022

Date

A handwritten signature in black ink that reads "David P. Pecoske". The signature is written in a cursive style with a large initial "D".

David P. Pecoske  
Administrator