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*Homeland Security: The Business of Preserving Democracy Not Practicing It*

55 Admin. L. Rev. 823 (2003)

Abstract by Raymond R. Janairo

In addition to several other measures, Congress responded to the September 11 attacks by federalizing airport security functions and personnel. Congress tasked the Transportation Security Agency (TSA) with employing and training 56,000 airport screeners. With a membership of over 600,000 federal employees, the American Federation of Government Employees (AFGE) sought to represent these screeners. TSA Administrator Admiral James M. Loy rebuffed this attempt by declaring that airport screeners were not “entitled to engage in collective bargaining” because of their “critical national security responsibilities.” The United States District Court for the District of Columbia dismissed the AFGE’s subsequent civil complaint, which the AFGE immediately appealed.

This student comment argues that the TSA was well within its power to bar collective bargaining by airport screeners. The author argues that Congress explicitly waived collective bargaining rights in the Aviation and Transportation Security Act (ATSA), thus preempting the Federal Service Labor-Management Relations Statute (FSLMRS). In light of *Colorado Nurses Ass’n v. FLRA*, 851 F.2d 1486 (D.C. Cir. 1988), the comment suggests that the statutory language and structure, as well as the legislative history of ATSA, support this conclusion. The author acknowledges that AFGE has a number of potent arguments against the TSA’s denial of collective bargaining power to the airport screeners. Moreover, the comment recognizes that arguments raising national security should not be given undue deference. However, in light of the new national security challenges of a post-September 11 world, the comment points to Congressional intent to justify the TSA’s actions. The article concludes by addressing the interrelationship of ATSA and the Homeland Security Act (HSA), and the implications for years to come. In light of the national security circumstance, the author ends by arguing that the right of airport screeners to organize must succumb to the TSA’s obligations to national security.