

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, AFL-CIO  
80 F Street, NW  
Washington, D.C. 20001

and

JAMES E. FERACE

Plaintiffs,

v.

JAMES M. LOY, in his official capacity as Under  
Secretary of Transportation,  
Department of Transportation  
400 7<sup>TH</sup> Street, S.W.  
Washington, D.C. 20590

Defendant.

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Civ. Action No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs bring this action to challenge a directive issued by defendant James M. Loy, the Under Secretary of Transportation, on January 8, 2003, that effectively prohibits federal airport screeners, employed by the Transportation Security Administration (TSA), from engaging in collective bargaining or from being represented for the purpose of engaging in such bargaining by any representative or organization. Plaintiffs seek a judgment declaring that James Loy did not have the statutory authority to issue the directive. Plaintiffs further ask the Court to declare that the directive deprives affected federal employees of their right to free speech and association under the First Amendment and to equal protection under the Fifth Amendment to the United States Constitutions. They also seek a judgment declaring that the directive is contrary to the

Aviation and Transportation Security Act, Pub.L. 107-71, and is otherwise arbitrary and capricious agency action in violation of the Administrative Procedure Act, 5 U.S.C. §706. In addition, plaintiffs seek an order enjoining the defendant, and his agents, from implementing any aspect of the directive.

### **JURISDICTION**

1. Jurisdiction over this action is conferred upon the United States District Court by 28 U.S.C. §1331. Plaintiffs also seek a declaratory judgment under 28 U.S.C. §2201.

### **VENUE**

2. Venue is properly laid before this Court in accordance with 28 U.S.C. §1391(e).

### **PARTIES**

3. Plaintiff American Federation of Government Employees, AFL-CIO is a labor organization that represents approximately 700,000 federal government employees throughout numerous federal government departments and agencies. Its headquarters is located at 80 F Street, N.W. Washington, D.C. 20001. AFGE represents the interests of employees within its bargaining units by, among other things, negotiating collective bargaining agreements, arbitrating grievances, filing unfair labor practices, lobbying, and litigating employees' collective and individual rights in the federal courts.
4. Plaintiff James Feraci is currently employed as an airport security screener with the TSA and has worked in that capacity at the Pittsburgh International Airport since August 28, 2002. He supports the effort to obtain union recognition among TSA employees at the Pittsburgh airport.
5. Defendant James M. Loy is the Under Secretary of Transportation for Security

and the person under whose authority the directive was issued. He is being sued in his official capacity.

### **FACTS**

6. In 2001, Congress enacted the Aviation and Transportation Security Act, Pub. L. 107-71, in part, in order to federalize security screening operations for passenger air transportation and intrastate air transportation under 49 U.S.C. §§44901 and 44935.
7. The ATSA created the Transportation Security Administration and as such, defines that agency's duties and authorities.
8. The ATSA explicitly mandates that the Federal Aviation Administration's personnel management system as defined in 49 U.S.C. §40122 shall apply to employees of the TSA. Pub.L. 107-71, §101(n).
9. The statutory scheme governing the FAA personnel management system requires that the FAA consult and "negotiate with the certified exclusive representatives" of that agency's employees. 49 U.S.C. §40122(a). That scheme also expressly incorporates the Federal Service Labor Management-Relations Act (FSLMRA) set forth at 5 U.S.C. §7101 *et seq.*, including, *inter alia*, the right to join and form a labor organization for the purpose of collective bargaining. 49 U.S.C. §40122(g)(2).

10. On January 8, 2003, defendant James M. Loy, the Under Secretary of Transportation, citing the ATSA as the basis of his authority, issued a directive that effectively prohibits federal airport screeners employed by the TSA from engaging in collective bargaining or from being represented for the purpose of engaging in such bargaining by any representative or organization.
11. Prior to the issuance of Loy's directive, AFGE had filed two petitions with the Federal Labor Relations Authority (FLRA) to obtain recognition as the exclusive representative of all TSA employees, including screeners, at Baltimore-Washington International Airport and LaGuardia Airport. *See* FLRA Case Nos. WA-RP-03-0023 and BN-RP-03-0008. Those petitions are supported by the signatures of at least 30% of TSA employees at each facility.
12. On January 9, 2003, AFGE filed a petition with the FLRA to obtain recognition as the exclusive representative of TSA employees at Pittsburgh International Airport.
13. The directive issued by Under Secretary Loy seeks to prohibit federal screeners employed by the TSA from exercising their rights to organize and to be represented by a certified organization.
14. Based upon information and belief, private sector airport screeners at other major airports, including O'Hare International in Chicago and Los Angeles International Airport, continue to enjoy the right to join labor organizations and to engage in collective bargaining.

**COUNT I**

15. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 14.
16. The Under Secretary was without statutory authority to issue the directive prohibiting federal airport screeners employed by TSA from engaging in collective bargaining or to be represented by an organization for the purpose of engaging in such bargaining.

**COUNT II**

17. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 16.
18. The directive prohibiting federal airport screeners employed by TSA from engaging in collective bargaining or to be represented by an organization for the purpose of engaging in such bargaining deprives plaintiffs of their right of free speech and association under the First Amendment.

**COUNT III**

19. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 18.
20. The directive prohibiting federal airport screeners employed by TSA from engaging in collective bargaining or to be represented by an organization for the purpose of engaging in such bargaining deprives plaintiffs of their right of equal protection under the law guaranteed by the Fifth Amendment to the United States Constitution.

**COUNT IV**

21. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 20.
22. The directive prohibiting federal airport screeners employed by TSA from engaging in collective bargaining or from being represented by an organization for the purpose of engaging in such bargaining is contrary to Pub.L. 107-71, §101(n) and otherwise is arbitrary and capricious under the standards set forth in
- 5 U.S.C. §706.

WHEREFORE, Plaintiffs pray that this Honorable Court enter an Order:

- (1) Declaring that Under Secretary Loy was without statutory authority to issue the directive prohibiting federal airport screeners from engaging in collective bargaining or from being represented by an organization for the purpose of engaging in such bargaining;
- (2) Declaring that the directive issued by Under Secretary Loy prohibiting federal airport screeners from engaging in collective bargaining or from being represented by an organization for the purpose of engaging in such bargaining deprives plaintiffs of their right of free speech and association under the First Amendment;
- (3) Declaring that the directive issued by Under Secretary Loy prohibiting federal airport screeners from engaging in collective bargaining or from being represented by an organization for the purpose of engaging in such bargaining is contrary to Pub.L. 107-71, §101(n) and otherwise is arbitrary and capricious under 5 U.S.C. §706;
- (4) Enjoining the defendant and/or his agents from implementing the

directive prohibiting federal airport screeners from engaging in collective bargaining or from being represented by an organization for the purpose of engaging in such bargaining;

- (5) Ordering defendants to pay plaintiffs' attorney fees and costs;
- (6) Granting such other relief as this Court finds necessary and proper.

Respectfully submitted,

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