

National Treasury Employees Union



**TESTIMONY OF
NATIONAL TREASURY EMPLOYEES UNION
NATIONAL PRESIDENT
COLLEEN M. KELLEY**

ON

**PERSONNEL ISSUES AFFECTING LAW ENFORCEMENT
EMPLOYEES OF THE FEDERAL GOVERNMENT**

BEFORE

**HOUSE GOVERNMENT REFORM SUBCOMMITTEES ON
CIVIL SERVICE AND AGENCY ORGANIZATION AND CRIMINAL
JUSTICE, DRUG POLICY, AND HUMAN RESOURCES**

**WEDNESDAY JULY 23, 2003 10 A.M.
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WASHINGTON, D.C.**

Chairwoman Davis, Chairman Souder, Ranking Members Davis and Cummings, distinguished members of the Committee, I would like to thank the Subcommittees for the opportunity to comment on personnel issues affecting law enforcement employees of the federal government.

As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 155,000 federal employees, including over 7,500 Customs Inspectors, 6,000 IRS Revenue Officers (RO's); and over 900 Customs Canine Enforcement Officers (CEO's) who perform law enforcement functions. The creation of the Department of Homeland Security (DHS) has moved the issue of federal law enforcement officer status to the forefront of federal employee pay and benefit issues. In addition, a number of bills have been introduced this Congress that would alter the definition and benefits of federal law enforcement officers.

As members of this committee are aware, on March 1, 2003, the Bureau of Customs and Border Protection (CBP) became an official agency of the DHS. The CBP combines over 42,000 federal employees from the Customs Service, the INS, Border Patrol and Agriculture Department. The focus of this front-line law enforcement bureau is the movement of goods and people across our borders and to prevent illegal entry into the U.S. of people or goods at or between ports-of-entry while facilitating the movement of legitimate trade and international travel. The legislation that created the DHS also required that the Secretary of Homeland Security, in consultation with the Director of the Office of Personnel Management, submit a plan to Congress for ensuring the elimination of unwarranted disparities in the pay and benefits of

federal employees being transferred to DHS. In addition to these provisions in the legislation that created the DHS, a number of other pieces of legislation have been introduced during the 108th Congress that would alter the definition and benefits of federal law enforcement officers.

Secretary Ridge provided a report to Congress on March 9, 2003 that focused on identifying differences in pay and benefits among employees transferring to DHS, but did not make specific recommendations regarding how those differences might be eliminated. The report clearly shows that within the CBP there are two classes of federal employees, those with law enforcement officer status and its benefits and those without (report attached).

Unfortunately, Customs Inspectors and CEO's fall into the latter class and are therefore being denied the benefits given to other federal employees in the CBP who they work with at 307 ports-of-entry across the country. In addition to the federal employee personnel flexibilities provided in the legislation that created the DHS, a number of other pieces of legislation have been introduced during the 108th Congress that would alter the definition and benefits of federal law enforcement officers.

One of the most important pieces of legislation involving the definition of law enforcement officer is HR 2442-The Law Enforcement Officers Equity Act of 2003. NTEU strongly supports this bipartisan legislation introduced by Representatives Bob Filner and John McHugh. This legislation would include Customs Inspectors, CEO's and IRS Revenue Officers as law enforcement officers for the purpose of 20-year retirement. As I will describe in greater detail in the remaining portions of my testimony, the record will clearly support the inclusion of all these employees under the early retirement provisions for federal law enforcement officers.

Other pieces of legislation such as HR 466 and HR 1676 would help federal law enforcement officers, who live in certain high-cost areas, to obtain adjusted percentage differentials under the Federal Law Enforcement Pay Reform Act of 1990. However, since Customs Inspectors, Canine Enforcement Officers and IRS Revenue Officers do not have law enforcement officer status, they are not eligible for the adjusted percentage differentials proposed in Representatives King and Rogers bills. NTEU agrees with the intent of these bills but would prefer that Congress eliminate the disparity between federal employees, such as those in Customs and the IRS, who for statistical purposes are considered law enforcement officers but by statutory definition are not.

HISTORY OF FEDERAL LAW ENFORCEMENT OFFICER STATUS

To better understand why it is so important to include Customs Inspectors, CEO's and Revenue Officers as law enforcement officers you need to look at the history of providing special retirement provisions for federal law enforcement officers which dates back to 1947, when such benefits were given to agents at the Federal Bureau of Investigation. These retirement provisions were expanded in 1948 to cover any officer or employee whose duties are primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States. Title 5 U.S.C. section 8336 (c)(1) allows law enforcement officers who fall under this definition to retire from the federal government at age 50 after 20 years of service. The law was amended in 1972 to include firefighters. Congress has found that the work of federal law enforcement officers and firefighters is extremely physically demanding -- far more taxing and dangerous than most jobs in the federal government. Further, Congress believed that the public interest is served when these jobs are

held by younger men and women capable of meeting the intense physical demands of such difficult work.

In light of the special nature and intense stresses associated with their positions, Congress continued to expand twenty-year retirement eligibility to include air-traffic controllers and nuclear materials handlers. Presently, Members of Congress and the Capitol Police are also eligible to retire with twenty years of service. NTEU believes that all of these employees are deserving of this benefit, however, it is time to recognize the neglected positions within Customs and the IRS.

NTEU believes that Customs Inspectors, IRS Revenue Officers, and Customs Canine Enforcement Officers should receive the same twenty-year retirement option as other law enforcement officers. Every day, the men and women who hold these jobs face enormous physical challenges and constant stress. Their job duties regularly expose them to the threat of injury or even death. This is dangerous work with real and unrelenting hazards. For the safety of these officers and for the sake of the public they serve, NTEU believes that a twenty-year retirement option as included in HR 2442 is wise public policy.

MISSIONS OF CUSTOMS AND IRS

The Customs Inspectors and CEO's in the CBP remain a front line law enforcement agency, with the primary missions of stopping terrorism and the flow of illegal drugs into the United States. Inspectors and CEOs enforce federal criminal laws and seize fugitives who are subject to state and federal warrants and are responsible for stopping sophisticated and dangerous

-- narcotics smugglers, international money-launderers, arms smugglers, terrorists, and fugitives from justice who pose serious threats to the United States. Customs inspectors use a variety of investigative tools to perform their duties, including vehicle and personal searches and direct interrogation. They search aircraft, vessels, automobiles, railcars, travelers and baggage for violations of civil and criminal laws at 307 ports of entry. The inspectional ranks of Customs continue to seize more illegal narcotics than all other federal agencies combined year after year.

The mission of the IRS is to enforce the federal tax laws, and IRS Revenue Officers are responsible for collecting delinquent taxes. They are assigned a case only after the IRS has performed extensive background work and afforded a taxpayer numerous opportunities to pay his or her taxes or file a delinquent return. If a case is still not closed after an exhaustive campaign of letter-writing, telephone calls, and record-searches, it is forwarded to a Revenue Officer for a thorough, professional field investigation and appropriate action.

LAW ENFORCMENT DUTIES OF CUSTOMS AND IRS EMPLOYEES

Customs Inspectors and Canine Enforcement Officers

The work of Customs Inspectors and CEO's involves substantial physical risks and personal danger. According to the FBI's 2001 Uniform Crime Report, 52 Customs officers were assaulted in 2001, 18 of which were assaulted with weapons such as vehicles, firearms, blunt objects or personal weapons. Customs officers also accounted for 52 out of 84 Treasury Department officers injured in the line of duty in 2001, nearly 62 percent. In recognition of the kind of work they were asked to perform, both the Department of Treasury and the Customs

Service included Customs Inspectors and Canine Enforcement Officers as law enforcement officers when these statistics were compiled for the 2001 FBI Uniform Crime Report.

Inspectors and CEOs are currently required to undergo nine weeks of basic training at the Federal Law Enforcement Training Center in Glynco, Georgia. In the near future, basic training for DHS inspectional personnel is anticipated to increase to 15-20 weeks when all DHS inspectional training is integrated into one border inspector curriculum. The current training includes criminal law, arrest authority and arrest procedures, search and seizure authority and techniques, self-defense tactics, frisk and pat-down procedures, handcuffing and take-down techniques, anti-terrorism, and firearms use. In addition, all Customs Inspectors and CEOs are issued firearms to protect themselves, their fellow Inspectors, and the public. The decision to require firearms was the agency's necessary response to the constant threat of violence faced by Inspectors in the performance of their duties at all ports. Currently, all Customs Inspectors and CEOs are required to qualify on a firing range at least three times a year.

Training is a matter of life or death for Customs officers, all of whom must be ready to confront armed and hostile travelers and desperate felons and fugitives. Twenty-four Customs Inspectors have been killed in the line of duty. According to the agency, Inspectors and CEOs have been shot, stabbed, run over, dragged by automobiles, assaulted with blunt objects and threatened. Terrorists, drug smugglers and fugitives do not hesitate to use violence to avoid being caught and arrested.

Threats and attacks against Customs Inspectors are not limited to any one border. Inspectors at every port face the hazards that come with trying to detect and detain drug traffickers and other felons. For example, the Canadian border is increasingly susceptible to terrorist and drug trafficking as Customs Inspectors working on the Northern border work regularly with local police to curb the flow of drugs and detain fugitives. One only has to ask Customs Inspector Diana Dean who stopped terrorist Ahmed Ressam, known as the Millennium Bomber, from entering the United States with a truckload of explosives in Port Angeles, Washington on December 14, 1999. It was later determined that Ressam had intended to use the explosives to destroy Los Angeles International Airport (LAX).

The threats and attacks are not diminished for inspectors at Customs seaports. Routine ship searches can often turn into dangerous confrontations with armed stowaways trying to smuggle drugs into the United States. Inspectors at seaports are required to board vessels at sea if the vessel is too large to come into the port. After reaching the ship out in the harbor, often they board it by descending a long rope ladder and timing the wave swells with the ladder's movement against the vessel. Once aboard, Inspectors are exposed to all kinds of hazards. They must endure the intense heat and noise of the engine rooms, and must safely navigate high-pressure lines, large machinery, cranes and fork lifts during routine searches.

Inspectors must also search all manner of cargo coming into the United States. This includes chemicals and other hazardous materials. In some areas, Inspectors and CEOs are exposed to insect swarms and disease, and in some situations, they have undergone mandatory testing for hazardous exposure to asbestos and lead. They must stand for hours in awkward

positions at border crossings where they breathe exhaust fumes and withstand driving rains, snow, ice and high winds, and the scorching heat of summer. The dangerous nature of ship inspection came to the forefront when Senior Customs Inspector Thomas Murray from Gramercy, Louisiana lost his life when he suffocated in the cargo hold of a ship loaded with scrap metal on October 30, 2001.

Customs Inspectors are also responsible for working with the Treasury Enforcement Communications System (TECS), which is connected to the National Crime Index Center computer. TECS lists warrants for people who are wanted by federal, state and local law enforcement agencies as well as all terrorist watch lists. Inspectors are required to seize these fugitives, who are wanted for such crimes as murder, robbery or rape, in addition to drug smuggling. Inspectors must detain these fugitives until they are transported to jail.

In most areas of the country, Customs Inspectors and CEOs work on task forces with state and local police departments to conduct special operations designed to detect illegal drugs, stolen vehicles and money laundering. They try to stop illegal merchandise from coming into the country, and high tech equipment, illegal currency and weapons from going out.

Not many people recognize the sacrifices that Inspectors and Canine Enforcement Officers make for the Customs Service. Their lives are controlled by their jobs. They rarely work regular 9-5 schedules and they have little control over the schedules they do work in any given two-week period. Staffing levels are not adequate to meet the needs of most ports, so Inspectors are frequently asked to work on their days off or to work beyond their regular shifts.

The constant strain of performing dangerous, life-threatening work on an irregular and unpredictable schedule has a profound impact on the health and personal lives of many Inspectors and CEOs. They must maintain control and authority, sometimes for 16 hours a day, knowing that a dangerous situation could arise at any moment.

Finally, and most importantly, Customs Inspectors and Canine Enforcement Officers are also the first line of defense against terrorism. Many ports of entry have elaborate anti-terrorist plans in place, and Inspectors work side-by-side with Customs Agents, FBI Agents and local police to carry out contingency plans. Inspectors take the lead in boarding suspicious flights, searching the plane, and looking for stowaways. In these tense situations, fraught with danger, Customs Inspectors are the only enforcement personnel who are not covered by the twenty-year retirement provisions of section 8336(c)(1) of Title 5.

IRS Revenue Officers

Study after study performed by the IRS shows that the job of Revenue Officer (RO) is the most hazardous in the Department of Treasury, and that includes the Secret Service. Revenue Officers are required to call on delinquent taxpayers from crime-ridden city neighborhoods to remote and isolated rural areas. Revenue Officers have been held hostage, attacked by dogs, hit by cars, threatened with shotguns, handguns, hunting rifles, knives, hammers, tire irons, and bombs. Delinquent taxpayers are sometimes in desperate financial or legal trouble. And it is no longer surprising when Revenue Officers find themselves confronting delinquent taxpayers that belong to tax protest groups or a local militia.

It is not always the taxpayer who poses the greatest danger. The neighbors and families of delinquent taxpayers have threatened to shoot Revenue Officers if they don't leave the premises. Revenue Officers must collect from drug dealers, organized crime figures, and tax protesters. Indeed, the growing number of illegal tax protest groups poses a significant threat to IRS Revenue Officers. These groups collect names and addresses of Revenue Officers and release information to fellow protesters. Many of these groups advocate violence against the IRS.

Revenue Officers must conduct seizures of taxpayer assets, including homes and cars. Many ROs wear bulletproof vests and are accompanied by armed police officers to safely perform this aspect of their jobs. Public sales of seized property can be dangerous as well. ROs sometimes need to move a sale location because they receive threats from tax protesters. Every Revenue Officer could tell you about the times when they feared for their lives while working a case. These brushes with violent, threatening delinquent taxpayers are etched in their minds and easily recalled.

The adversarial nature of the Revenue Officer/delinquent taxpayer relationship places significant strain on the typical IRS Revenue Officer, for whom danger and confrontation are part of the daily routine. Revenue Officers face crushing workloads, a hostile work environment, and the ever-present threat of physical attack, a danger that, sadly, extends to their families and loved ones. The stress associated with these conditions can exact a severe toll. According to one study, relied on by the IRS in 1985, these stresses are exacerbated with age and can lead to

physical problems, including high blood pressure, stomach problems, insomnia, suicide and depression.

COST ANALYSIS

One of the arguments that has been used in the past to deny granting early retirement to these officers is the cost. There is no doubt that extending law enforcement officer status to additional federal employees will involve substantial costs. NTEU strongly believes that the costs are easily outweighed by the benefits to the officers, their families, and the American public. No one could reasonably dispute the importance of the work done by these law officers. Whether stopping the flow of illegal drugs or enforcing our nation's tax laws, these hard-working men and women provide a critical public service.

Given the significance of these jobs, it is vitally important for Customs and the IRS to be competitive with other state and local law enforcement agencies in the recruitment and retention of first-rate personnel. Yet we know that the combination of low starting salaries and second-rate retirement benefits does not always attract the best candidates for these difficult, dangerous and essential jobs. Recruitment and retention of capable personnel was a preeminent consideration behind Congress' establishment of the twenty-year retirement option for other law enforcement officers and firefighters. NTEU believes the same compelling reason exists here.

The IRS performed an extensive cost-benefit analysis in 1993, looking at such factors as the loss or quit rates of highly experienced employees, reduced training costs, and increased revenue collection. According to the IRS, a direct relationship exists between retirement benefits

and personnel loss rates. As retirement benefits increase, loss rates decrease. More to the point, incumbents entitled to twenty-year retirement have a lower attrition rate than incumbents in the same series that do not. According to this study, loss rates for incumbents with twenty-year retirement entitlement were more stable over time, and little change occurred from one fiscal year to another.

The high cost associated with turnover and training new employees must also be considered when weighing the costs and benefits of a twenty-year retirement. When Revenue Officers quit or leave the agency, their inexperienced replacements need extensive and costly training. It takes an inexperienced new RO some two years to learn the job and become as productive as the experienced RO that he or she has replaced. The existence of the twenty-year retirement option will not only help the IRS retain experienced personnel, but it will help the agency compete against other law enforcement agencies to recruit experienced and capable officers.

The situation within Customs is no different. Currently, newer hires to Customs are highly susceptible to the pull of twenty-year retirement benefits and higher salaries offered by state and local law enforcement agencies. They have received costly training and on-the-job experience within Customs, but they know they deserve to be rewarded for the dangers and risks they are exposed to every day. All too often, talented young officers treat Customs as a stepping-stone to other law enforcement agencies with more generous retirement benefits. One only has to look at the number of Customs personnel lost to the Air Marshal program during the

last few years because of the benefit of twenty-year retirement. When this occurs, both Customs and the wars on terrorism and drugs suffer as a result.

While NTEU believes that the benefits of a twenty-year retirement clearly outweigh the costs, there are certainly ways to ease the financial burden to these agencies and the taxpayers. These options include a phase-in period for the retirement eligibility, or the mandatory retirement age. The Subcommittees could devise a twenty-year retirement package for IRS and Customs much like that received by Members of Congress and air traffic controllers, who also benefit from a twenty-year retirement.

CONCLUSION

NTEU is convinced that Inspectors and Canine Enforcement Officers of Customs and Revenue Officers of the IRS should receive the same early retirement benefits as those enjoyed by other federal law enforcement personnel. When law enforcement officers from different agencies join forces on a drug raid or to search a boat for armed smugglers, Customs officers are often the only law officers on the scene who are not eligible for early retirement. They all face the same dangers and the risk of death or injury, but they don't all have the same rights and benefits.

Revenue Officers are subjected to the same gross inequities when they join with law officers from other federal agencies and their state and local counterparts on dangerous and risky operations. These dedicated men and women are united by the violence and threats they must endure, but when it comes to retirement benefits, the Revenue Officer is not covered.

Customs and IRS law officers put their lives on the line every day to serve the American people. The work they do is as dangerous as it is important. In the course of fighting the wars on terrorism and drugs as well as upholding our tax laws, these men and women have been beaten, kicked, stabbed, and dragged behind cars; some have been killed. They are part of the family of law enforcement officers across this nation who put themselves in harms way to uphold the laws passed by this Congress. They are subject to the same dangers, meet the same rigorous job standards, and rely on the same investigative skills and techniques as other law enforcement officers who enjoy the benefits of twenty-year retirement. Common sense demands an end to this inequity.

Thank you for the opportunity to be here today on behalf of NTEU and its 155,000 members to discuss these extremely important federal employee issues.