Order Code RS21268
Updated July 29, 2002

Homeland Security: Data on Employees and Unions Potentially Affected

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Summary

This report provides data on federal employee unions and employees who would be potentially affected by the creation of a new Department of Homeland Security (DHS), as proposed by the President. For information on legal issues raised by the proposed DHS, see CRS Report RL31520, *Collective Bargaining and Homeland Security*. This report will be updated if events warrant.

President Bush's proposal for a new Department of Homeland Security (DHS) would incorporate agencies/offices/functions from 22 existing departments and independent agencies, as well as approximately 170,000 employees, into its structure. In effect, the creation of a DHS is a major reorganization within the federal government. Most of the realigned agencies in the President's proposal are covered under the provisions of the Federal Service Labor-Management Relations Statute (FSLMRS; Title VII of the Civil Service Reform Act of 1978, U.S.C. §7101-7135), and many of their employees are represented by unions that have negotiated collective bargaining agreements with the agencies.

However, the Civil Service Reform Act of 1978 includes a provision (5. U.S.C. Section 7103 (b)) authorizing the President to exclude an agency or subdivision from the ability to bargain collectively if the primary function of the agency or subdivision is intelligence, counterintelligence, investigative, or national security work; and if applying the labor-management relations provisions of the Act would be inconsistent with national security requirements.

The President's legislative proposal was introduced in the House on June 24, 2002 (**H.R. 5005, Armey**). H.R. 5005 was passed by the House on July 26, 2002. This report focuses on the implications of the President's proposal to create a DHS. Other legislation, in particular **S. 2452 (Lieberman)**, reported by the Senate Committee on Governmental Affairs on June 24, 2002, would limit the President's authority to invoke national security as a rationale for prohibiting unions in a new DHS. The labor provisions in this bill are

discussed in CRS Report RL31520.[1] **H.R. 5005** permits the Secretary of the DHS, jointly with the Director of the Office of Personnel Management, to establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security. The requirements for this new system are listed in CRS Report RL31513.[2] The Bush Administration asserts that flexibility is needed in the DHS's human resources management system because the major function of the department is to maintain the security of the United States and to respond to evolving threats and conditions. The Administration asserts that the creation of a new DHS is not an attempt to eliminate unions. In testimony submitted to the House Select Committee on Homeland Security on July 15, 2002, Governor Tom Ridge stated:

> The proposed legislation does not impair employees' collective bargaining rights in any way or change existing authorities. Specifically the legislation proposed by the Administration provides that when the Department is established, employees represented by unions will continue to be represented because their bargaining units will move with them. The Administration would support specific statutory affirmation of the existing rights of the Department of Homeland Security employees to union representation, subject to National Security authority.

In contrast, federal employee unions have weighed in with significant reservations regarding the President's proposal and its implications for employee unions. For example, Bobby Harnage, president of the American Federation of Government Employees, stated:

> It is extremely dangerous to conclude that the war on terrorism must be fought by federal employees denied their basic labor and civil service rights and protections.... When public employees' rights and protections are compromised, so too is the safety and security of the public they serve.... Homeland security requires a secure work force with employees who can be certain that they, too, will be protected from politics and favoritism and from punishment for speaking out against any mismanagement they witness.... Destroying the rights of federal employees will, in turn, destroy any attempt to provide skilled, well-trained, professional employees to guard our nation and its citizens.[3]

Approximately 43,000 federal employees who are represented by a union[4] would be potentially affected by the creation of a new DHS. The major unions potentially affected, and the numbers of employees covered by these unions, are listed below, by function and

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[1] For information on the implications for collective bargaining of the proposal for a new DHS, as well as a discussion of the labor-related provisions contained in other DHS bills under consideration, see CRS Report RL31520, *Collective Bargaining and Homeland Security*, by Jon Shimabukuro.

[2] CRS Report RL31513, *Homeland Security: Side-by-Side Comparison of H.R. 5005 and S.2452, 107th Congress*. See pp. 66-67 for a summary of the human resources management provisions.

[3] American Federation of Government Employees. News Release, July 11, 2002.

[4] Data on these unions and the number of employees they represent are as of January 2001. Data are from: U.S. Office of Personnel Management. *Union Recognition in the Federal Government*, March 2002.

agency. (Small functions/agencies as well as functions/agencies without union members are *not* listed.)[5]

- The Animal and Plant Health Inspection Service, located in the Department of Agriculture. There are four major unions with 2,498 employees covered.

    1. National Association of Agriculture Employees: 2,032 covered employees.
    2. American Federation of Government Employees: 235 covered employees.
    3. National Association of Plant Protection and Quarantine Office Service Employees: 225 covered employees.
    4. National Federation of Federal Employees, Affiliate of International Association of Machinists and Aerospace Workers: 6 covered employees.

- The Coast Guard, located in the Department of Transportation. There are 12 major unions with 3,486 employees covered.

    1. American Federation of Government Employees: 1,937 covered employees.
    2. International Association of Machinists and Aerospace Workers: 507 covered employees.
    3. Metal Trades Council: 474 covered employees.
    4. National Association of Government Employees, Affiliate of the Service Employees International Union: 308 covered employees.
    5. National Federation of Federal Employees, Affiliate of International Association of Machinists and Aerospace Workers: 87 covered employees.
    6. Service Employees International Union: 47 covered employees.
    7. National Marine Engineers Beneficial Association: 41 covered employees.
    8. Hotel Employees and Restaurant Employees International Union: 32 covered employees.
    9. International Brotherhood of Police Officers: 24 covered employees.
    10. International Brotherhood of Teamsters: 12 covered employees.
    11. International Brotherhood of Painters and Allied Trades: 9 covered employees.
    12. International Association of Firefighters: 8 covered employees.

- The United States Customs Service, located in the Department of the Treasury.

    1. National Treasury Employees Union: 11,731 covered employees.

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[5] For a broader discussion of human resources issues, including a discussion of all agencies and functions that would be shifted to a new DHS see: CRS Report RL31500, *Homeland Security: Human Resources Management*, by Barbara Schwemle.

- The Federal Emergency Management Agency.

    1. American Federation of Government Employees: 1,138 covered employees.

- The Federal Protective Service, located in the General Services Administration.

    1. Fraternal Order of Police: 50 covered employees.

- The Immigration and Naturalization Service, located in the Department of Justice.

    1. American Federation of Government Employees: 24,324 covered employees.

Because of the large number of employees, resources, and bargaining units potentially affected, collective bargaining in a new DHS may be complex. If no changes are enacted as part of the establishment of a new DHS, current law provides several possible options:

- During the transition to a new DHS, The Federal Labor Relations Authority (FLRA) would be responsible for deciding whether existing bargaining units are appropriate based on three criteria:

    1. The unit must ensure a clear and identifiable community of interest among employees in the unit.
    2. The unit must promote effective dealings with the agency involved.
    3. The unit must promote efficiency of the operations of the agency involved.

- These unit determinations could be resolved in several possible ways:[6]

    1. Under successorship, there is effectively no change in existing bargaining units.
    2. A petition could be filed by employees or management seeking a clarification of unit or amendment of recognition or certification.
    3. One or more bargaining units could be combined to form a new bargaining unit.
    4. The bargaining unit could be determined to be no longer appropriate or the union representing the unit to be no longer the exclusive representative of the unit.
    5. As noted above, employees may be determined to be "engaged in intelligence, counterintelligence, investigative, or national security work," and therefore excluded from coverage under the Federal Service Labor Management Relations Statute.

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[6] For a complete discussion of these issues see: CRS Congressional Distribution Memorandum, *Department of Homeland Security — Current Administrative Structure of Units Proposed to Transfer*. Project Coordinator, Sharon Gressle, June 28, 2002. p. 12-14.