

AFGE

STATEMENT OF

**T. J. BONNER, PRESIDENT
NATIONAL BORDER PATROL COUNCIL
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO**

BEFORE THE

**SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND
THE DISTRICT OF COLUMBIA**

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON

**PROTECTING THE PROTECTORS: AN ASSESSMENT OF FRONT-LINE
FEDERAL WORKERS IN RESPONSE TO THE SWINE FLU (H1N1) OUTBREAK**

MAY 14, 2009

The American Federation of Government Employees appreciates the opportunity to present the views and concerns of the more than 600,000 Federal and District of Columbia workers that it represents regarding the response of various agencies to protect them and the public they serve from infectious diseases. Like most other workers in America, government employees report to an office or other worksite to perform their tasks, and interact with co-workers and/or the public during the course of a normal workday. When a pandemic strikes, many of them are at an elevated risk of exposure, affecting our government's ability to provide the vital services that our citizens have come to expect.

Although there is clearly a shared interest between management and labor to safeguard the health of our government's workforce, the adversarial relationship that has poisoned the overall atmosphere for the past eight years has unfortunately spilled over to the health and safety programs as well. The recent H1N1 (swine) flu outbreak is no exception. The response of most employing agencies was typical of their responses to other health and safety issues: Slow and inadequate.

The lack of communication was a big part of the problem. There has been little or no communication from agencies' headquarters to the individual workplaces, and the same is true with respect to the communication from those headquarters to the unions. While some information has been available through the media, Federal employees should not have to rely on that limited source. AFGE's members have had a difficult time obtaining useful information about worker protection from their agencies. The information they do get is inconsistent and contradictory, and it is often different from

one part of the country to another. At least one of AFGE's agency bargaining councils felt compelled to issue its own guidance to fill this void.

Many agencies have been dismissive of employees' concerns, showing callous disregard for employees' legitimate worries. Agencies at all different levels in the chain of command need to be attuned to employees' concerns and respond to them quickly and appropriately.

Workers are being deployed to border areas with no protection and with little or no regard for their fears and concerns or whether their failure to act might actually contribute to the spread of the virus. AFGE has been advised that there have been discussions between the public health agencies and the worker health and safety agencies about what respiratory protection is needed, but in the absence of agreement, some workers have gone unprotected, putting both them and the public with whom they interact at increased risk.

At the national level, AFGE has also experienced difficulties getting information. Unions need to be at the table during discussions assessing these situations and dealing with them. Plans to address the H1N1 flu are being developed without the involvement of, or even consultation with, employee representatives. AFGE raised the same issues when agencies were directed to develop pandemic influenza plans and policies after the Severe Acute Respiratory Syndrome (SARS) outbreak more than six years ago.

Only one agency head reached out to AFGE and other Federal employee unions: John Berry, the Director of OPM. Director Berry also ensured that unions were invited to attend a forum OPM hosted on Human Resources Readiness. One agency, the

Department of Transportation, has sent AFGE its guidance to managers and supervisors for review. However, that guidance deals mostly with how managers should handle leave issues.

AFGE's National Office has written letters to the Secretary of the Department of Homeland Security, the Acting Administrator for the Transportation Security Administration, and several other agencies to find out how they plan to deal with the outbreak and imminent pandemic and how they plan to protect their workers. To date, AFGE has not received a response to any of its inquiries.

AFGE's agency bargaining councils have also made efforts to learn how their agencies plan to protect workers from on-the-job exposure to the H1N1 flu virus. The AFGE Council of Equal Employment Opportunity Commission Locals has proposed that offices with public contact go to a telephone system until the flu situation abates. Predictably, the agency declined. That Council also proposed testing the agency's Continuation of Operations Plan (COOP). The COOP also includes telework, which OPM is encouraging. Again, the agency declined. This is contrary to OPM guidance on telework and to the recommendation that agencies use this situation as an opportunity to strengthen their telework programs.

Working with the union that represents the vast majority of Federal employees on health and safety in general and the flu outbreak in particular has a direct benefit for the Federal Government. AFGE can help reassure Federal employees that their employer, the Federal Government, is in fact doing whatever is necessary to help protect them

while they carry out the important functions of our government, and in so doing, help protect the public from misinformation and infection.

Until recently, there was no coordination with worker safety and health protection agencies such as OSHA and NIOSH. OSHA and NIOSH should play an active role in the development and enforcement of worker protection policies. At the same time, the implementation of such policies should facilitate, not complicate, efforts to protect workers.

At this point, the CDC is unable to determine whether any of the confirmed cases of H1N1 flu were contracted from a workplace exposure, even in the healthcare and homeland security sectors, where workplace exposures are highly probable. There needs to be better tracking of work-related H1N1 flu cases.

In addition, OSHA should be directed to work on a standard to protect employees from airborne pathogens, such as H1N1 flu and tuberculosis. The Blood Borne Pathogens Standard does not address the hazards of aerosolized pathogens. Although the spread of H1N1 seems to be slowing down, we don't know whether it will come back later, and we don't know how virulent it will be. We need to have a standard that will address the issues that we have faced during the last few weeks.

In AFGE's experience, agencies have a history of not taking action unless forced to do so, either by an arbitrator's decision after the union seeks redress through the negotiated grievance procedure or by an OSHA investigation. One example is asbestos exposure. Thirty-seven years after the AFL-CIO filed a petition for an OSHA asbestos standard, our members are still fighting to get their agencies to abate the hazard.

Asbestos exposure continues to be a major concern for employees who must work in and around contaminated areas. It seems that most agencies would rather ignore or even cover up these problems than fix them. Even when agencies are forced to act on the abatement, some don't ensure that it is done according to the OSHA asbestos standard. Employees often continue to work in the areas undergoing asbestos removal.

Congress needs to send the message to individual agencies and facilities that the Federal Government is serious about correcting, and not just identifying, problems. This kind of support from the highest levels of agency management will set the tone for health and safety compliance and accountability in individual offices throughout the country. Injuries and illnesses among Federal employees have been far too high for far too long. It is imperative that everyone works together to bring the numbers of workplace injuries and illnesses down.

Achieving this goal is not a far-fetched proposition. There are already several ways to do it, including national and establishment-level health and safety committees, OSHA partnerships with agencies and unions, and other DOL programs. Ultimately, there also needs to be more enforcement of OSHA standards and regulations in Federal workplaces. Too many agencies are quick to ignore OSHA notices of unsafe and unhealthful conditions because they don't carry a fine. For various reasons, including its own limited resources, OSHA has not done the follow-up to ensure that the hazards are mitigated. AFGE is encouraged by the comments the Secretary of Labor made recently that OSHA is back in the enforcement business. It is also encouraging to see that President Obama's budget proposal includes major increases for OSHA,

MSHA, and NIOSH. This demonstrates a major commitment to strengthening health and safety programs and worker protections.

The existing health and safety regulations for Federal agencies contained in 29 C.F.R. 1960 are largely satisfactory, but need to be enforced in order to be effective. Some agencies also have good health and safety programs, and if they were followed at the local level, the Federal Government would be the model employer that it should be. When policies and guidance are issued by the headquarters of an agency, they are not always followed at the local level. That needs to change if we are to effectively address health and safety problems.

We should aim for preventive health and safety programs in which employees and employers are actively involved and engaged in identifying workplace hazards and in fixing problems before people become ill or get hurt. Workers and their unions are key in this process. Front-line workers often know best how to abate the hazards.

The importance of encouraging Federal agencies to involve their unions in all aspects of such programs, both at the national and the local level, cannot be overstated. AFGE has a number of very knowledgeable safety representatives and activists who are eager to work with their employing agencies to reduce injuries and illnesses among our members.

The Federal Government has made some good-faith attempts at improving health and safety. Programs such as the Federal Worker 2000 and its successor, Safety, Health, and Return to Employment (SHARE) are good starting points. AFGE remains willing to work on these types of programs and hopes that the new

Administration will not only continue, but also expand them soon.

There is also the issue of workers' compensation. Some Federal employees will undoubtedly get sick from H1N1 due to a workplace exposure. These employees need to be taken care of and advised about their right to file for workers' compensation without interference from their employing agency.

For workers with predictable workplace exposure, such as health care workers, Homeland Security employees, and others with direct public contact, a diagnosis of H1N1 flu should be presumptive for workers' compensation purposes. AFGE has already received reports that some TSA managers are telling employees that if they contract H1N1 flu they would have no way to prove that it was a result of their employment. This type of attitude is unacceptable, and AFGE urges the Committee to ensure that it doesn't permeate throughout the Government. At such a difficult time, employees need help from their agencies, not resistance to the filing of a claim. They should not be denied their right to file or to receive medical attention under workers' compensation.

While no Federal agency was fully prepared to respond to the H1N1 flu outbreak, some responded better than others. One of the agencies whose employees were most directly affected by the outbreak had one of the least satisfactory responses. The Department of Homeland Security failed to ensure that its various components issued sufficient quantities of personal protective equipment, and failed to promulgate or follow sensible or useful guidance to employees.

As news of the H1N1 flu epidemic spread across the United States, DHS workers began asking their supervisors for information and, more important, direction in responding to this potentially deadly threat. Unfortunately, by and large, the answers to these questions from DHS supervisors were confused, conflicting, or non-existent.

When it finally issued Department-wide guidance, DHS placed itself in violation of the OSHA regulations. Had it continued to allow employees to voluntarily use respirators, they would not have been required to complete medical questionnaires and undergoing fit testing. By mandating the use of respirators in certain situations, however, DHS triggered the aforementioned requirements. This would not have been a problem if DHS had ensured that those requirements had been completed before the outbreak, but it did not even have the resources in place to complete those requirements for several weeks. This response is completely unacceptable. Employees should never be placed in harm's way without being provided with the necessary personal protective equipment.

The situation at one of DHS' components, the Transportation Security Administration, is illustrative of this unsatisfactory response. Beginning the weekend of April 25, 2009, AFGE began to receive phone calls, e-mails, and blog comments from its Transportation Security Officer (TSO) members who expressed grave concerns about the conflicting information and indifferent attitude they were receiving from TSA management to their questions regarding precautions against the H1N1 virus. On any given day, a TSO will come in close contact with hundreds or even thousands of passengers at screening checkpoints, examining their travel documents, photo

identification, and belongings. They are in constant contact with surfaces touched by the traveling public, and breathe the same air as infected individuals. Yet, despite this constant exposure to potential health hazards, TSA offered no official guidance to TSOs for more than a week after the H1N1 virus outbreak, and when that guidance was finally issued, TSOs found it to be confusing, illogical, and in conflict with the guidance of both the CDC and DHS Secretary Napolitano.

For example, in Atlanta, Baltimore-Washington, Cleveland, Denver, Detroit, Las Vegas, Los Angeles, Minneapolis/St. Paul, Oakland/Richmond, and Sacramento, TSOs were denied respirators when requested. At Baltimore-Washington Airport, managers were given respirators, but TSOs were not. TSOs in Denver and Dayton were denied respirators because, according to TSA management, doing so would cause a “public panic.” TSOs in Detroit were told masks were only to be given to passengers who exhibited flu-like symptoms. TSA management at Houston Hobby and Dallas/Ft. Worth were told they could only wear a respirator with a doctor’s note. Although most airports had gloves available for TSOs, many airports had no sanitizer or other disinfectant for TSO usage. Behavioral Detection Officers at the Omaha airport were told they could only use TSA-approved hand-sanitizers. TSOs at airports providing hand-sanitizer and other disinfectants were not allowed recurrent breaks to either wash their hands or apply the hand sanitizer. Clearly, TSA management at individual airports—and sometimes by shift at airports—was flying by the seat of its pants and making up the rules as they went along. By this time, the news was widespread that the H1N1 virus had infected thousands of people in Mexico and was spreading throughout the United

States. TSOs were left to worry about their health and the health of their families for a week without direction from DHS and TSA management.

As early as April 27, 2009, OPM Director John Berry issued a memorandum entitled "Advice to Federal Employees and Agencies on Preventing the Spread of the Current Flu and maintaining Readiness to Use HR Flexibilities if Necessary," directing "employees who work in locations in which they may come in contact with people carrying the swine flu virus," such as TSOs, to follow precautions such as separating a traveler who appears unwell to an area away from workers and the public and providing the ill traveler with a surgical mask. The memo specifically required that federal workers keep "a distance of six feet" between themselves and someone who appears ill and to use "N95 respirators" if the "employee must maintain closer contact than the six feet of distance." This information was not officially communicated to TSOs until May 1, a full week after the H1N1 virus was first recognized as a major public health threat.

AFGE's letter to TSA Acting Administrator Gale Rossides was never acknowledged by TSA, and even though AFGE represents more than 10,000 TSOs and has done so for more than eight years, TSA never informed AFGE of the latest H1N1 developments and never sought its input to protect the 40,000 men and women who serve as America's first line of defense against terrorism in our skies. If TSA had engaged in dialogue with AFGE, it would have heard the following: In keeping with OSHA guidelines, N-95 respirators, gloves, and hand sanitizers should have been made available to any TSO requesting them; shifts should have been rotated to allow TSOs to wash or otherwise sanitize their hands and wipe down their work stations on a recurrent

basis; TSA should have provided testing for TSOs who either suspected they were ill or had been exposed to the H1N1 virus; TSOs infected with the H1N1 virus should have been provided with a CA-2 form and granted administrative leave; and TSOs who either had to care for a sick family member or children out of school due to closings should have been afforded the same “human resources policies and flexibilities” as other federal workers as stated in OPM Director Berry’s April 27, 2009 memorandum. These are simply common-sense steps that serve to protect the public and workers and their families.

Out of the many airports where AFGE has members, only TSOs at Covington/Cincinnati, Washington National, Pittsburgh, St. Louis, and San Diego airports reported that the universal precautions of respirators, gloves, and hand sanitizers were put in place immediately following the notice of a public health emergency. It is by sheer luck that this flu outbreak did not evolve into a mass public health hazard, and far too many TSOs and their families were needlessly placed at risk because their employer failed to take simple steps to recognize the situation and protect all involved. TSA has chosen to deny TSOs the rights of other federal workers to have a voice at work through a union that is their exclusive representative. TSO concerns could have been addressed through communications with AFGE as their exclusive bargaining agent, or even addressed beforehand in a collective bargaining agreement. To this end, AFGE calls for the swift passage of H.R. 1881, the Transportation Security Workforce Enhancement Act of 2009 introduced by Rep. Nita Lowey (D-NY) in April and again asks DHS Secretary Napolitano to order Acting TSA Administrator Rossides to

grant TSOs all rights under title 5, including the right to collective bargaining.

In conclusion, the problems with agencies' responses to occupational illnesses such as H1N1 flu are not new. Agencies are generally slow to respond to health and safety concerns, often citing lack of funding for health and safety improvements.

Federal agencies have fostered a culture in which employees are discouraged from reporting safety hazards. Employees are reluctant to report injuries and/or illnesses for fear of being targeted with retaliatory actions.

AFGE urges the Committee to hold Federal agencies accountable for providing a safe and healthy working environment and to protect their employees. Having in place effective workplace health and safety programs with active worker and union participation will help us better prepare for the next crisis. We don't know which disease we will be dealing with next, but we should be using this time to better prepare. AFGE also urges the Committee to ensure that workers who become ill as a result of their exposures on the job receive compensation consistent with existing statutes.

AFGE is prepared to work with the Committee, employing agencies and OSHA to make the Federal Government a safer and more healthful workplace. This will not only improve morale, but will also allow governmental agencies to continue to carry out their vital missions during a pandemic event.

This concludes my statement. I will be happy to respond to any questions.