

AFGE

STATEMENT OF

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NATIONAL BORDER PATROL COUNCIL
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO**

BEFORE THE

**SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE
FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA**

**SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS**

ON

**PROTECTING OUR EMPLOYEES: PANDEMIC INFLUENZA PREPAREDNESS AND
THE FEDERAL WORKFORCE**

June 16, 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. On June 11, 2009, the World Health Organization declared the H1N1 virus to be a Phase 6 global pandemic—the first in 41 years. At this time of pandemic, many federal workers 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 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 is 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 pandemic and how they plan to protect their workers. To date, AFGE has received only a few responses. Only one—the Defense Logistics Agency—sent a copy of the Pandemic Influenza Plan. Two others—the Department of the Army and the Department of the Air Force—suggested AFGE locals work with their local commanding officers. The response from TSA did little more than refer to the DHS guidance requiring employees within 6 feet of someone known or suspected to be infected with the H1N1 virus to wear an N95 respirator.

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.

AFGE would like to take this opportunity to suggest that the Committee ask agencies about the status of their pandemic flu plans. Federal agencies should be held accountable for their responsibility to safeguard both the health and safety of their employees and to ensure that the government services they provide continue in the event of a flu pandemic—which was declared by the World Health Organization on Thursday, June 11, 2009.

Agencies should also be reminded that 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 in the United States, we don't know whether it will come back later, nor how virulent it will be. What we do know is that it has not gone away. We need to have a standard that will address the issues that we have faced during the last several months and are likely to face in the near future.

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 actually 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.

Department of Homeland Security (DHS)

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 (DHS) 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. Although DHS later rescinded that mandate, it did so after the initial wave of the pandemic in the United States had subsided. This response is completely unacceptable. Employees should never be placed in harm's way without being provided with the necessary personal protective equipment.

Transportation Security Administration (TSA)

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 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.

It took weeks for TSA Acting Administrator Gale Rossides to acknowledge AFGE’s letter. Even though AFGE represents more than 10,000 TSOs and has done so for more than eight years, TSA barely informed AFGE of 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. Instead of

addressing AFGE's concerns directly, Acting Administrator Rossides' letter merely restated previous OPM guidance. This dismissive attitude toward worker concerns must stop immediately and be replaced with open, timely communication and effective responses to the exposure of TSOs to a virus that has reached pandemic levels.

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 TSOs to be granted the same collective bargaining rights and workplace protections as other federal workers and strongly urges DHS Secretary Napolitano to order Acting TSA Administrator Rossides to grant TSOs all rights under title 5, including the right to collective bargaining.

AFGE worked with Federal Workforce, Postal Service and the District of Columbia Subcommittee Chairman Stephen Lynch (D-MA) on an amendment included in the TSA Authorization bill recently passed by the House requiring TSA to establish

policies and permit any TSA employee who wants to wear personal protective equipment during any emergency to do so. Chairman Lynch offered the amendment following the inability of DHS to explain its policies regarding the use of respirators and other protective equipment by DHS personnel during a recent hearing before the subcommittee. Although the bill's passage is a good step forward for TSA workers--including TSOs--until this provision is signed into law TSOs will be forced to deal with unclear and inconsistent personal protection policies. TSOs and other DHS workers must be protected by policy, law, or collective bargaining negotiations requiring DHS to issue policies to ensure that workers are properly trained and fitted with appropriate equipment that is made readily available to them.

Immigration and Customs Enforcement (ICE)

In the judgment of AFGE's Immigration and Customs Enforcement Council, the ICE response to the H1N1 virus has been confused, ineffective and generally mismanaged by Assistant Secretary Torres. In fact, the situation is so bad that were it not for the fact that a new Assistant Secretary has been sworn in, the Council was considering the taking of a vote of no-confidence in Mr. Torres. AFGE believes it would have passed unanimously.

Employees of ICE, along with all DHS employees, were justifiably anxious about the potential harm the H1N1 virus might do to them and their families. This was especially true for those employees being asked to work in and near the nation considered "ground zero" for the outbreak—Mexico. Yet no information from ICE was forthcoming until April 29, 2009, the day that the World Health Organization elevated the

Pandemic Influenza phase to Level 5, which amounts to a declaration that a pandemic is imminent and that time for communications and mitigation strategies is short.

Moreover, Assistant Secretary Torres' communication simply repeated the suggestions made in a message from DHS Secretary Napolitano. Employees being deployed to the southern border were not properly briefed on the H1N1 risks or precautions and the Union was not consulted prior to distribution of the Torres memo. Had we been consulted, we would have raised a number of questions that employees were asking and that required answers. To this day, questions about ICE policies on a range of issues, such as the use of protective equipment, medical care for employees and prisoners, remain unanswered.

To illustrate the problem, we offer the Committee this e-mail exchange between an ICE Deportation Officer and his supervisors: (We have deleted the names of the individuals as they are not necessary to make the point.)

From:
To:
Sent: Wed Apr 29 14:12:20 2009
Subject: Swine Flu

I have had questions from Union Members about the Swine / H1n1 flu.

Regarding the message from Secretary Torres about the H1n1 flu.

How are we supposed avoid close contact with people when we are processing them and speaking to them in the pods?

The message says stay home if you are sick. So if our officers are exposed to this virus and become sick are they going to be covered by OWCP/ Admin leave and not need to burn their own sick leave? What are the reporting procedures if an officer feels he or she is exposed?

Is the service going to provide employees with additional protective equipment? Gloves and hand sanitizer are available but no one has any masks.

Will this be done as a preemptive measure or is the service going to wait until this is a full blown pandemic?

Deportation Officer

From:
To:
Sent: Wed Apr 29 14:24:22 2009
Subject: Re: Swine Flu

The officers can wear masks, which of course will freak out the detainees. If you research the swine flu you will learn that it is the flu. You should use universal precautions, i.e. Wash your hands and cover your sneeze. The chances of dying are not any greater with the swine flu than they are with any other flu. If you still have questions give me a call in the office tomorrow.

, AFOD

From: FOD
Sent: Wednesday, April 29, 2009 3:02 PM
To:
Cc:
Subject: FW: Swine Flu

Directions out of HQ are that until there is a confirmed case protective equipment will not be utilized. The other issues will be addressed if and when the situation arises. Thanks.

(Supervisor's name)

The email exchange reveals two important things: 1) The supervisor makes it clear that DHS policy as of April 29, 2009 was not to allow the use of respirators; and 2) that confusion reigned among ICE supervisors on this basic question.

Mr. Chairman, in our view the ICE response to the H1N1 pandemic has been a travesty. When employees needed information and guidance they were simply sent to the CDC website. This is not enough and the AFGE ICE Council has submitted a demand to bargain on the ICE Pandemic Influenza H1N1 Virus Preparedness/Contingency Plan and its impact on ICE employees. The demand to bargain is intended to force the agency to consider a wide range of issues raised by employees over the course of the epidemic's spread around the world. These issues

include: the need for medical screening for employees returning from nations where the risk of exposure is high, the use and distribution of anti-viral drugs where appropriate, employee education efforts on the appropriate use of sick leave and continuation of pay, the proper and appropriate use of personal protective equipment, etc.

We believe that thorough consideration of these issues will greatly enhance ICE's ability to respond to the current outbreak as well as future health care threats. Employees should never again be placed in a situation where they are being required to risk their health and perhaps their lives without being fully apprised of the risks and the efforts to reduce them.

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 Subcommittee 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 wave of this flu or the next disease. AFGE also urges the Subcommittee 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 Subcommittee, 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 this and future pandemic events.

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