



**TSA MANAGEMENT DIRECTIVE No. 1100.63-4
UNION REPRESENTATION DURING EXAMINATION**

To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Respect, and Commitment.

NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive and all related Handbooks, Attachments, and Appendices establish Transportation Security Administration (TSA) policy and must be applied accordingly.

REVISION:

This revised directive supersedes TSA MD 1100.63-4, *Personal Representation During Examination or Investigation*, effective March 21, 2014, as amended by HCAM 2021.63-4, dated November 9, 2021.

SUMMARY OF CHANGES:

Title of directive changed; Section 1, Purpose, removed references to the Interim Guidance on Employees' Right to Personal Representation During Examination or Investigation, and to personal representation. Section 2, Scope, updated to include Agency Representatives and Union Representatives. Section 3, Authorities, updated to refer to the Determination dated December 30, 2022. Section 4, Definitions, revised American Federation of Government Employees, Bargaining Unit Employees (BUEs), Interview, and Determination; added Agency Representative, Collective Bargaining Agreement, Examination, Management Official, and Union Representative; deleted Personal Representative. Section 5, Responsibilities, revised to include Agency Representatives and Union Representatives. Section 6, Policy, removed references to specific sections of the Decision Memorandum, Determination; added additional information on whether a BUE's belief that the examination may result in discipline; and removed exclusions related to a security incident. Section 7, Procedures, clarified guidance on interview delays, the disallowance of union representation, and the Union Representative's behavior. Section 8, Approval and Effective Date, updated to reflect the current Assistant Administrator of Human Capital, distribution, and the email address of the point of contact.

1. PURPOSE:

This directive provides policy and procedures concerning the union's right to be given the opportunity to be represented at any examination of a BUE by an Agency Representative in connection with an investigation if the BUE reasonably believes the examination may result in disciplinary or adverse action against the BUE and the BUE requests representation.

2. SCOPE: This directive applies to TSA employees, including TSA management officials, Agency Representatives, BUEs, and Union Representatives (whether TSA employees or not).

3. AUTHORITIES:

A. Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)

B. Determination on Transportation Security Officers and Collective Bargaining dated December 30, 2022

4. DEFINITIONS:

- A. Adverse Action: A suspension of more than 14 days, including an indefinite suspension, an involuntary demotion for performance/conduct, or a removal.
- B. Agency Representative: A local supervisor, management official, or any TSA employee or agent authorized by TSA management to conduct any fact-finding process (e.g., administrative inquiries); also any representatives from the TSA Investigations Office (INV) conducting investigations of possible criminal, civil, or administrative violations.
- C. American Federation of Government Employees (AFGE): The union certified as the Exclusive Representative of BUEs under the Determination (also referred to as “the Union”).

NOTE: On June 29, 2011, the Federal Labor Relations Authority certified AFGE as the Exclusive Representative of BUEs under the 2011 Decision Memorandum, Determination on Transportation Security Officers and Collective Bargaining, signed and dated February 4, 2011, by former TSA Administrator John S. Pistole.

- D. Bargaining Unit Employees (BUEs): The full- and part-time non-supervisory personnel carrying out screening functions under 49 U.S.C. § 44901, as that term is used in ATSA § 111(d), and as defined in the Determination dated December 30, 2022.

NOTE: Security Support Assistants, Coordination Center Officers, and Supervisory Transportation Security Officers are not BUEs.

- E. Collective Bargaining Agreement (CBA): The Collective Bargaining Agreement in effect between TSA and the American Federation of Government Employees (AFGE) covering BUEs.
- F. Determination: The Determination on Transportation Security Officers and Collective Bargaining, dated December 30, 2022.
- G. Disciplinary Action: Actions consisting of a Letter of Reprimand to a suspension of 14 days or less.
- H. Examination: Any fact-finding process (e.g., administrative inquiries) conducted by an Agency Representative and investigations conducted by the TSA Investigations Office (INV) of possible criminal, civil or administrative violations.
- I. Interview: For purposes of this directive, questioning, verbal or written, conducted by an Agency Representative to conduct an examination or investigation concerning TSA operations and activities or TSA employees’ conduct.
- J. Management Official: Any TSA employee who is a higher-level official in the employee’s chain of supervision, such as a supervisor or a manager.

**TSA MANAGEMENT DIRECTIVE No. 1100.63-4
UNION REPRESENTATION DURING EXAMINATION**

K. Union Representative: An individual authorized by AFGE to represent the union's interests and who is acting in that capacity consistent with the Determination, the collective bargaining agreement, TSA policy, and/or any related guidance.

5. RESPONSIBILITIES:

TSA employees, including TSA management officials, Agency Representatives, BUEs, and Union Representatives (whether TSA employees or not) are responsible for complying with this directive.

6. POLICY:

A. The Exclusive Representative will be given the opportunity to be represented at any examination of a BUE by a representative of the agency in connection with an investigation if:

- (1) The BUE reasonably believes the examination may result in disciplinary or adverse action against the BUE; and
- (2) The BUE requests representation.

NOTE: Refer to Article 15 of the CBA for additional information.

B. Whether a BUE's belief that the examination may result in discipline is reasonable will be determined by assessing whether a reasonable person would believe that disciplinary or adverse action may result from the examination given the totality of the circumstances from the perspective of the BUE.

C. Nothing in this directive alters the obligation of BUEs to cooperate fully with all TSA examinations, as required under TSA policy and/or any related guidance, as well as all applicable laws and regulations.

D. Not all interviews are investigative and, therefore, will not qualify as examinations under this directive, such as if:

- (1) The interview is for purposes other than an examination or investigation and/or the BUE cannot reasonably believe it may result in disciplinary or adverse action against them.
- (2) The interview is exclusively to inform the BUE of a disciplinary or non-disciplinary decision made prior to the meeting/interview.
- (3) Announcement of a decision already made, such as a disciplinary action.
- (4) Performance evaluation meetings (even if the performance evaluation is negative).
- (5) Counseling, corrective actions, or verbal/written warning sessions.

7. PROCEDURES:

- A. BUEs interviewed in connection with an examination as provided in this directive must:
- (1) Comply with a request to be interviewed and fully cooperate with the examination;
 - (2) Provide full and complete responses to questions posed during the interview; and
 - (3) Request union representation orally or in writing either before or during the interview if the BUE wishes to have a Union Representative present during the interview.
- B. After a BUE requests union representation, an Agency Representative conducting an examination may, as appropriate:
- (1) Grant the BUE's request and delay the interview for a reasonable time period until a Union Representative is available. It is the BUE's responsibility to work with the union to secure a Union Representative. The arrangements made to accommodate union representation directive may not cause an unreasonable delay of the Agency's examination. The reasonableness of the delay will be assessed based on the individual circumstances of each case in consideration of TSA's mission;
 - (2) Deny the BUE's request and end the interview;
 - (3) Deny the BUE's request and continue with the interview after making the decision that the matter is not one for which union representation is authorized as described in this directive and so inform the BUE in writing; or
 - (4) Offer the BUE the choice of voluntarily continuing without a Union Representative.
- C. If a BUE requests union representation in a matter for which union representation is appropriate and a Union Representative is unavailable or disallowed due to special circumstances (e.g., the Union Representative's participation might compromise the investigation), the Agency Representative will inform the BUE that they may obtain an alternative Union Representative. In that event:
- (1) If an alternative Union Representative is available within a reasonable period of time that will not unduly delay the examination, the interview will be delayed for a reasonable period of time and the BUE will not be required to answer questions during that time. The Agency Representative(s) conducting the examination or investigation will determine what constitutes a reasonable period of time and will so inform the BUE. While the agency is required to provide reasonable cooperation in conducting the interview, it is not obligated to postpone it unreasonably to meet the union's schedule or to afford the BUE representation by a particular Union Representative.
 - (2) If an alternative Union Representative is not available in a reasonable period of time,

**TSA MANAGEMENT DIRECTIVE No. 1100.63-4
UNION REPRESENTATION DURING EXAMINATION**

the interview may continue without a Union Representative for the BUE.

D. For the purposes of this directive, a Union Representative during the examination:

(1) May:

- (a) Actively participate;
- (b) Assist and consult with the affected BUE;
- (c) Speak or otherwise participate on the record in a formal proceeding;
- (d) Seek clarification of questions and suggest other avenues of inquiry;
- (e) Elicit favorable facts from the BUE;
- (f) Engage in private conferences outside the presence of the investigator during an investigatory examination if necessary to afford the Union Representative the ability to effectively represent the BUE and does not interfere with the integrity of the investigation; and
- (g) Have confidential communications with the BUE that occur during the course of representation (unless confidentiality has been waived or the agency establishes an overriding need for the information).

(2) May not:

- (a) Interfere with agency's ability to achieve the legitimate objectives of the investigation;
- (b) Interfere with the integrity of the investigation; and
- (c) Be verbally abusive or interfere with the interview by interrupting the BUE's answers.

For example, the Union Representative cannot answer for the BUE, instruct the BUE not to answer questions or to not answer questions fully.

E. The Union may have access to information that will allow the Union to become familiar with the BUE's circumstances and to effectively assist the BUE and participate in the interview. The Union's right to obtain relevant information for the interview is balanced against the interests of the Agency in investigating and disciplining misconduct.

F. If a Union Representative engages in one or more of the prohibited actions described in Section 7.D(2) of this directive, the Agency Representative conducting the interview should inform the Union Representative of the violation(s) and proceed with, or

**TSA MANAGEMENT DIRECTIVE No. 1100.63-4
UNION REPRESENTATION DURING EXAMINATION**

discontinue, the interview.

- (1) If the Agency Representative decides to discontinue the interview, they will inform the BUE that the interview will be recessed for a reasonable time, as determined by TSA management, to allow the BUE to obtain a replacement Union Representative. The reasonableness of the delay will be assessed based on the individual circumstances of each case in consideration of TSA's mission.
- (2) If another Union Representative is available in a reasonable time period, the interview will continue with the new Union Representative representing the BUE.
- (3) If another Union Representative is not available in a reasonable time period, the Agency Representative may continue the interview without a Union Representative representing the BUE.
- (4) Any prohibited conduct by the BUE's Union Representative will not be attributed to the BUE or negatively affect consideration of whether to propose or impose disciplinary or adverse action against the BUE.

G. If a BUE's request for union representation is denied and a disciplinary or adverse action is proposed or imposed against the BUE based on information obtained during the BUE's interview without a Union Representative, the BUE may raise the effect of the absence of a Union Representative at the interview during the disciplinary or adverse action process. The TSA management official or other TSA employee or agent authorized by TSA management proposing or imposing disciplinary or adverse action will consider the BUE's concerns regarding the lack of a Union Representative and evaluate those concerns as they would evaluate other factors raised by a BUE during the disciplinary or adverse action process.

H. A BUE may seek review, in an appropriate forum, of any final disciplinary or adverse action against them or her pursuant to [TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*](#), TSA policy, and/or related guidance.

8. APPROVAL AND EFFECTIVE DATE:

This directive is approved and effective the date of signature, unless otherwise specified.

APPROVAL

Jason L. Nelson
Assistant Administrator for
Human Capital

Date

EFFECTIVE

Date

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