AMENDMENT TO H.R. 5005, AS REPORTED

OFFERED BY MR. PORTMAN OF OHIO

Page 189, after line 7, insert the following (and redesignate succeeding sections and references thereto accordingly):

1 **SEC. 762. LABOR-MANAGEMENT RELATIONS.**

2 (a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

3 (1) IN GENERAL.—No agency or subdivision of
4 an agency which is transferred to the Department
5 pursuant to this Act shall be excluded from the cov-
6 erage of chapter 71 of title 5, United States Code,
7 as a result of any order issued under section
8 7103(b)(1) of such title 5 after June 18, 2002,
9 unless—

10 (A) the mission and responsibilities of the
11 agency (or subdivision) materially change; and

12 (B) a majority of the employees within
13 such agency (or subdivision) have as their pri-
14 mary duty intelligence, counterintelligence, or
15 investigative work directly related to terrorism
16 investigation.

17 (2) EXCLUSIONS ALLOWABLE.—Nothing in
18 paragraph (1) shall affect the effectiveness of any
19 order to the extent that such order excludes any por-

1 tion of an agency or subdivision of an agency as to
2 which—
3 (A) recognition as an appropriate unit has
4 never been conferred for purposes of chapter 71
5 of such title 5; or
6 (B) any such recognition has been revoked
7 or otherwise terminated as a result of a deter-
8 mination under subsection (b)(1).
9 (b) PROVISIONS RELATING TO BARGAINING
10 UNITS.—
11 (1) LIMITATION RELATING TO APPROPRIATE
12 UNITS.—Each unit which is recognized as an appro-
13 priate unit for purposes of chapter 71 of title 5,
14 United States Code, as of the day before the effec-
15 tive date of this Act (and any subdivision of any
16 such unit) shall, if such unit (or subdivision) is
17 transferred to the Department pursuant to this Act,
18 continue to be so recognized for such purposes,
19 unless—
20 (A) the mission and responsibilities of such
21 unit (or subdivision) materially change; and
22 (B) a majority of the employees within
23 such unit (or subdivision) have as their primary
24 duty intelligence, counterintelligence, or inves-

1 tigative work directly related to terrorism inves-
2 tigation.
3 (2) LIMITATION RELATING TO POSITIONS OR
4 EMPLOYEES.—No position or employee within a unit
5 (or subdivision of a unit) as to which continued rec-
6 ognition is given in accordance with paragraph (1)
7 shall be excluded from such unit (or subdivision), for
8 purposes of chapter 71 of such title 5, unless the
9 primary job duty of such position or employee-
10 (A) materially changes; and
11 (B) consists of intelligence, counterintel-
12 ligence, or investigative work directly related to
13 terrorism investigation.
14 In the case of any positions within a unit (or sub-
15 division) which are first established on or after the
16 effective date of this Act and any employees first ap-
17 pointed on or after such date, the preceding sentence
18 shall be applied disregarding subparagraph (A).
19 (c) HOMELAND SECURITY.—Subsections (a), (b), and
20 (d) of this section shall not apply in circumstances where
21 the President determines in writing that such application
22 would have a substantial adverse impact on the Depart-
23 ment's ability to protect homeland security.
24 (d) COORDINATION RULE.—No other provision of
25 this Act or of any amendment made by this Act may be

1 construed or applied in a manner so as to limit, supersede,
2 or otherwise affect the provisions of this section, except
3 to the extent that it does so by specific reference to this
4 section.