

House Report 111-119 - FAA REAUTHORIZATION ACT OF 2009

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The reauthorization of the Federal Aviation Administration (FAA) has historically been a bipartisan effort. The very nature of air transportation and the shared goal of safe, efficient and accessible air travel have traditionally resulted in an inclusive and bipartisan process and work product. Unfortunately, for the first time in over two decades, the FAA Reauthorization bill being reported out by the Committee was not introduced as a bipartisan bill.

We acknowledge it is vitally important that the Federal Aviation Administration (FAA) be reauthorized. It has been over 18 months since the last reauthorization expired in September 2007. Since that time, the FAA has been working on a series of short-term extensions. At the end of September 2009, when the current FAA extension expires, it will be the longest period of time in the last twenty years that the FAA has gone without a reauthorization.

H.R. 915 does include important provisions to address air traffic control modernization, staffing, small community air service, environmental improvements, and passenger rights. However, H.R. 915 is a partisan bill due to the inclusion of several controversial and costly provisions. These provisions were included despite the Minority's efforts to reach out to the Majority to work together to resolve our concerns. We believed that such an effort would have been productive given the drastically changed circumstances since September 2007 when the House passed H.R. 2881, the FAA Reauthorization bill of 2007.

So, while H.R. 915 has many good provisions, there are several provisions included by the Majority that we believe are very problematic from both a policy and a procedural perspective. We strongly oppose the inclusion of these provisions in H.R. 915 for the following reasons.

The first provision is the 'NATCA provision' which would repeal the FAA impasse process contained in current law (the same rules that were in place in 1998 when NATCA negotiated a very favorable contract); require the FAA and National Air Traffic Controllers Association (NATCA) to negotiate for 45 days; and, if negotiations fail, require binding arbitration pursuant to an impasse process set up by the provision. The 'NATCA provision' would also reach back and void all contracts that were in impasse

since July 2005, reinstate both the air traffic controller and multi-unit NATCA contracts, and provide up to \$20 million for lost pay and benefits.

Of equal concern, the impasse process set up by the NATCA provision is untested and leaves many issues unaddressed. Because of this uncertainty, we anticipate years of lengthy and costly litigation at the end of any binding arbitration process. At the very least, the \$1.86 billion that the FAA and NATCA agreed would be saved by the 2006 contract will be lost because the NATCA provision reinstates the terms of the 1998 contract (and all the raises and premium pay) until a final resolution is achieved.

The Congressional Budget Office (CBO) estimates that fully funding the proposed changes in the NATCA provision would require additional appropriations of \$83 million in 2009 and about \$1 billion during the four-year period (2009-2012) authorized by the bill. Additionally, CBO states, 'Relative to current law, CBO expects that reinstating those agreements [agreements in impasse since July 2005] would increase FAA's spending for compensation and benefits by an average of 12 percent for more than 9,000 individuals that were employed by the FAA before the end of 2006. We also estimate that FAA's costs for compensating and providing benefits for roughly 5,500 individuals hired since 2006, including those hired between the date of enactment of H.R. 915 and the conclusion of the dispute resolution process would increase by about 40 percent.' CBO assumes that the dispute resolution process will conclude within about six months of H.R. 915's enactment and indicates that Federal costs incurred while that process unfolds would be greater if it takes longer.

We believe that the 'NATCA provision' sets a terrible precedent. By legislatively altering the contract negotiation proceedings almost three years after the contract was implemented, Congress wrongly inserts itself into the middle of a labor dispute between the FAA and NATCA and puts the entire FAA Reauthorization process in jeopardy.

We believe that the right approach is to have the parties sit down together and settle the issues through one-on-one negotiations. Since January 2007, we have encouraged the parties to take this approach. We remain firmly committed to this approach to resolving the issues in dispute. With the change in Administration, President Obama and Secretary LaHood can administratively meet, negotiate and reach a mutually agreeable and fiscally responsible settlement agreement with NATCA, That is the best way to resolve this matter.

We support amending the FAA labor impasse process going forward and allowing binding arbitration. However, it is important to note that if Congress does not appropriate funds to cover salaries, the FAA will be forced to find that money somewhere else. This in turn will lead to less money for other FAA employees and programs. The budget pressures this provision imposes will also threaten important capacity and modernization projects. Therefore, any change to the FAA labor impasse process must be fair, transparent, and balanced, and must be considered in the context of the entire Federal budget while considering the role of Congress in appropriating funding.

There is no question that air traffic controllers are hard working professionals who do an outstanding job each and every day. They are also very well compensated for their good work. According to FAA data for fiscal year 2008, the average controller base salary was \$107,700 (includes locality pay); the average cash compensation was \$125,300 (includes base salary and premium pay); and the total average cash compensation and benefits was \$166,100. Controllers' earnings far exceed other FAA employees, whose average pay and benefits in fiscal year 2008 was \$127,122. Between 1998 and 2008, air traffic controller compensation increased by an astounding 74%. In that same time period, the pay gap between FAA controllers and other FAA employees grew from 24% to 31%. Controllers' salaries also exceed the salaries of other Federal employees in equally or more stressful professions, such as fire fighters, police officers and military controllers. By way of comparison, military air traffic controllers in combat zones (U.S. Air Force Staff Sergeant with 10 years service) make roughly \$36,964. The average FAA controller makes over \$166,000.

We are very concerned that the 'NATCA provision' is not intended to address the needs of the Nation's air transportation system. Rather, by inserting itself into labor negotiations, voiding the 2006 contract and reinstating the terms of the 1998 contract, Congress is putting the cost of maintaining the controllers' salary increases on others. In order to cover the controller salaries and back pay, other FAA employee groups would suffer furloughs and budget cuts and the FAA would be unable to hire much needed new controllers. The FAA's efforts to modernize the air traffic control system would also be a victim of budget cuts. Future delays and congestion in the system will go unaddressed and will be the unacceptable costs borne by the traveling public. If flying becomes unbearable, the entire aviation industry will be harmed and the one million jobs created by the industry will also be in jeopardy.

We believe that the 'NATCA provision' is both unfair and extremely costly, almost \$1 billion over four years. The provision's impact on other FAA employees, the ongoing air traffic control modernization effort, and much needed safety and capacity projects would also be unacceptable. At the same time, however, we remain very much in favor of prospectively amending the current FAA labor impasse process in a way that is fair, cost effective, and reasonable for everyone. We also encourage the FAA and NATCA to continue settlement discussions and to reach a mutually acceptable settlement of the matters in dispute,

The second controversial provision is the 'FedEx provision.' This provision would change the labor laws that apply to FedEx Express--an express carrier. When FedEx Express was organized back in 1971, it began as an airline, and as such was covered under the Railway Labor Act--as are all rail and air companies. FedEx Express expanded its operations over the years and is now an integrated cargo operation with trucking operations dependent on its air carrier operations. In 1995, the Ninth Circuit Court of Appeals affirmed that FedEx is an integrated operation.

The Railway Labor Act (RLA) differs from the National Labor Relations Act (NLRA) in that coverage is national in scope, whereas under the NLRA workers can organize on a

local basis. The RLA recognizes the national scope of certain transportation services and the national disruption that can occur if there were to be a strike by a local unit within the national organization. This is particularly true in light of the fact that with a National and now global aviation industry, a strike by a local unit within a national organization could have far reaching and very disruptive and detrimental impacts to the U.S. economy.

Unions are free to organize employees at FedEx Express (the airline) under the RLA. In fact, the only union at FedEx was organized under the RLA. The Air Line Pilots Association, Int'l (ALPA) organized FedEx Express pilots. FedEx Ground, which is a totally separate company from FedEx Express, is governed by the NLRA. Under the NLRA, unions can organize local bargaining units. To date, other than FedEx Express pilots, FedEx employees have chosen not to have union representation as is their right.

Much has been said about a provision included the 1996 FAA reauthorization bill. Some might believe that Congress changed the law so that FedEx Express was first covered by the Railway Labor Act in 1996. That is not true. As stated previously, FedEx Express has been covered by the Railway Labor Act since it was founded in 1971.

What the 1996 provision did was correct the unintended consequences of a conforming amendment that was included in the ICC Termination Act of 1995. For economic regulation purposes, the 1995 law eliminated the distinction between carriers so that 'express carriers' was no longer referred to for economic regulation purposes. A conforming amendment to the Railway Labor Act was discovered sometime later to have had an impact on the Railway Labor Act and how it affected FedEx Express. The provision included in the 1996 FAA reauthorization bill was to correct an unintentional drafting error (mistakenly eliminating 'express companies' from any statutes, including the RLA, thinking it as an archaic term like 'steamship companies' for example).

From a procedural perspective, we are very concerned that the 'FedEx provision' ignores Congressional intent, targets one company; and has not been subject to public hearings, discussion or debate. The provision abandons Congress's balanced approach in labor organization matters and ignores the longstanding Congressional principles of hearings and appropriate procedure. Furthermore, it has potential unintended and adverse consequences that have never been considered or discussed in public hearings.

We also have concerns about a provision that was accepted as part of the Manager's Amendment during the full committee mark-up. The Manager's Amendment, offered by Chairman Oberstar, included an Airline Alliance Antitrust Immunity provision ('ATI provision') that was never the subject of any public hearings, discussion or debate. This provision requires the Comptroller General to study the legal requirements and policies followed by the Department of Transportation (DOT) in deciding whether to approve international alliances and grant exemptions from the antitrust law in connection with alliances.

However, the ATI provision does not just require a study. It also sunsets existing grants of antitrust immunity related to international alliances on or before the last day of the

three-year period beginning on the date of enactment unless the exemption is renewed by the Secretary.

The ATI provision fundamentally changes the DOT's antitrust immunity and air carrier alliance review processes and policies. Its impact on the Department of Justice's review policies is unclear. The provision ultimately could terminate existing grants of antitrust immunity granted after scrutinized review by both Department of Transportation and Department of Justice. Such a fundamental change in law, which arguably legalizes a process for abrogating agreements between the Government and its regulated entities, deserves greater Congressional scrutiny and debate.

Finally, other provisions of concern to us include overseas repair stations, OSHA standards for crews on board aircraft, and aircraft rescue and fire fighting standards for airports. We believe that these provisions should be further vetted to ensure their practical application. While we might agree with the sentiment of the provisions, which are intended to address safety issues, the language was written without regard to the huge costs and burdens on a struggling airline industry and airport community. The overseas repair stations provision has the potential to threaten the United States' bilateral aviation agreements with foreign countries. Additionally, the inclusion of the overseas repair stations provision has resulted in the European Union indicating that costly retaliatory actions would follow if the provision is enacted. The Committee ought to have hearings to discuss these issues thoroughly before mandating compliance. It is our responsibility to fully explore the practical application of these mandates and their potential unintended consequences.

For these reasons, we oppose the inclusion of the `NATCA provision,' the `FedEx provision,' the Airline Alliance Antitrust Immunity provision, and the overseas repair stations, OSHA standards for crews on board aircraft, and aircraft rescue and fire fighting standards for airports provisions in H.R. 915 as reported out of Committee.