PASS UPDATE ON H.R.4441

As all PASS members know, we continue to voice our opposition to privatization of the air traffic control system as included in H.R.4441. The following is an update on our position and specific opposition to the language in H.R.4441.

On February 3, Rep. Bill Shuster (R-Pa.), chair of the House Transportation and Infrastructure Committee, introduced H.R.4441, which included language that privatizes the air traffic control system by turning the Air Traffic Organization (ATO) into a not-for-profit corporation. The bill barely passed the committee on February 11 after hours of debate and proposed amendments. One amendment, which was offered by Ranking Member Peter DeFazio (D-Ore.) and strongly supported by PASS, would have retained the current FAA structure but streamlined the procurement process and protected the agency from sequestration. Unfortunately, the amendment was defeated.

The legislation still has to be considered and approved by the full House before moving on its current form. The Senate has yet to introduce its version of the bill so there is still time to ensure that version does not contain language that privatizes the air traffic control system. The following are specific reasons PASS opposes the privatization language in H.R.4441:

- The legislation includes a combination of private and public-sector labor laws that will inevitably lead to confusion, instability and workplace issues. For example, it is not clear whether employees of the corporation could strike or that Federal Labor Relations Authority (FLRA) case law will continue to apply.

- It is not clear that existing FAA unions will continue to exist in the future as the corporation apparently has opportunities to rescind, amend or alter the status of bargaining units.

- Future pay, healthcare and retirement benefits will no longer have the a foundation in federal law. These will be negotiable topics, which will come at a cost as unions are forced to bargain for something already provided by law and in an environment where the cost of healthcare is increasing exponentially for most private sector employees.

- Transferred employees may remain in the Federal Employee Retirement System (FERS) or the Civil Service Retirement System (CSRS) or convert to an unknown corporate plan; the corporation inherits the financial burden of supporting these systems, subjecting the retirement of employees to financial instability.

- The legislation fails to guarantee that every collective bargaining agreement will have a grievance process, thus stripping the primary means for employees to resolve workplace issues and protect their rights.

- The legislation dramatically changes how elections are currently conducted by basing the selection of a union on the majority of employees in an appropriate unit rather than a majority of those voting. In other words, your right to voice your vote in a union election is taken away if others fail to vote.

- The legislation explicitly allows for the corporation to sue any union, for unions to sue each other and for employees to sue the union. This is a significant change from what exists today and means that a union will be exposed to significant financial risks.

- The legislation eliminates the Federal Services Impasses Panel (FSIP), which is the part of the FLRA that resolves bargaining impasses. Under the bill, we will be forced to pay for an arbitration and possibly end up in court. The bill also places strict timelines on the parties to complete the bargaining process.

- Under the bill, Fair Labor Standards Act (FLSA) non-exempt employees will no longer be able to substitute compensatory time for overtime hours worked, many alternative work schedules will not be available, and overtime will based on 40 hours a week as opposed to also including eight hours a day. In fact, FLSA exempt employees may have no coverage for overtime compensation.

- This bill does not assist veterans as they will no longer receive preference during the hiring process.

- Separating the ATO from the rest of the agency will have considerable consequences. ATO interacts daily with the entire agency, including the Office of Aviation Safety (AVS), and this relationship is a vital part of operating a safe and efficient aviation system.

- AVS would be required to oversee the new private entity, which is concerning considering that there are already a limited number of inspectors. It is unclear how the remaining part of the FAA will be able to provide adequate oversight of the new corporation.

- The remaining portion of the FAA would still be under appropriations and vulnerable to the impacts of sequestration. As such, separating out the ATO does not fully address the FAA’s funding problem.

- The FAA and other federal agencies share resources, facilities and information. Separating the ATO would make it difficult for this sharing of resources, especially important during a national emergency or natural disaster.

- The privatized ATC corporation would be entirely funded by user fees, which will be determined by a board of directors made up of select users of the system. This does not provide consistent and sustainable funding, but in turn subjects the entire air traffic system to unpredictable economic forces.

- Turning funding decisions over to a private corporation has the possibility to subject the system to financial hardships. In the case of an economic downturn, it is unclear whether employees would lose their jobs or the aviation system would require a taxpayer bailout. There are also concerns that additional fees would be passed on to the consumer.

- The corporation would not only be making funding decisions. The board of 13 would dictate everything from fees to implementation of modernization efforts, from staffing levels to training of employees, from maintenance of systems and equipment to determining the number of facilities nationwide. A board of directors with built-in conflicts of interest and zero oversight or accountability is not the entity that should be responsible for the operation and maintenance of the U.S. air traffic control system.

- Congressional oversight would also be severely curtailed. The ability for stakeholders and members of Congress to work together on aviation-related issues has been pivotal to the success of our system. In a private corporation, lawmakers will lose the right to provide input on funding, staffing, safety, training and numerous other areas in which congressional oversight is present today.

- The language in the bill also allows for the corporation to contract out air traffic services. The language also does not consider that these contractors could in turn contract out services to yet another corporate layer.

Every union, every industry group, every airline had a choice about whether to support or oppose ATC privatization. In the weeks and months leading up to the introduction of H.R.4441, PASS participated in meetings and discussions with lawmakers. We knew privatization was not the best plan for our members, or for the U.S. air traffic control system. Once we made that decision, we put all of our energy behind getting information out that ATC privatization is a bad idea. While we lobbied, and were successful, for many provisions important to PASS (members can read about our successes here), we did not stand on the sidelines but actively participated in all discussions and made clear that we were opposed to any language that privatized the air traffic control system.

We are continuing to join with six other FAA labor unions and many others in the aviation community who share our opinion. Creating a sustainable financial future does not require destruction. We are choosing to try to fix the problem, not start over.

Please continue to visit www.opposeATCprivatization.com for more information and updates.

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