

**Feb. 15, 2016**

**Update: The AIRR Act, With Questions and Answers**

The Aviation Innovation, Reform, and Reauthorization Act of 2016 or the AIRR Act

Let's start with why NATCA supports the AIRR Act. What did we get for our support? The bill contains strong protections for the workforce now and into the future. For several decades there have been attempts to separate the air traffic operation in the US from the regulatory functions of the FAA. It has seen several forms, including a fully privatized, for-profit company to a government corporation. The effort that occurred under the Clinton administration was the United States Air Traffic Services Corporation or USATS and NATCA supported it for many of the same reasons we are supporting this bill.

While we recognize that this bill has an uphill climb to become law during this Congress, we knew that we had to be involved if we wanted the bill to include protections we know are necessary for our membership. We could have sat on the outside and not advocated for language that protects our members and just fought to kill attempts by Congress to change the FAA's structure, but then this bill would have been loaded with provisions that negatively affected our membership now and into the future. Being engaged and working to include protections for the workforce was the only way to ensure that our members were protected whether or not the bill becomes law.

FAA Reauthorization is up for renewal and will have to be extended until a new long-term authorization is signed into law. We did not ask for a bill to take us out of government. This bill was coming no matter what we did. That is why we have been briefing the membership on this issue at local membership meetings, FacRep meetings, NATCA classes, NATCA in Washington, and OKC student meet and greets. Additionally we have sent out many emails highlighting our concern regarding the upcoming FAA Reauthorization bill and reform that could really hurt us. We also spent time on this at our NATCA Convention with a panel discussion and then debate on strategy that resulted in a revised as well as a new policy statement.

The Convention delegation voted for us to push back against privatization (specifically any for profit model) for as long as we could. They also gave us the flexibility to pivot if legislation was to be introduced that could change our world. The second paragraph language was added:

PSC-2 Contracting Facilities (4/06, 10/14)

The National Office shall spare no reasonable expense in the protection, continuation, and growth of all bargaining unit positions, and shall offer all lawful resistance to outsourcing or contracting out.

In the event of imminent or impending reform or restructuring of the Air Traffic Organization, including privatization, the National Executive Board shall spare no reasonable expense to protect every interest of the Union including, but not limited to: pay, benefits, and working conditions.

Additionally we also passed this:

PSA-5 Alternative Funding Stream (10/14)

The National Air Traffic Controllers Association supports the exploration of the following concepts:

- a) Creating a sustainable financial future. It is critical to establish a funding system that provides dedicated and sufficient revenues to pay for obligations.
- b) Separating the operations and support functions from the regulatory functions of the Federal Aviation Administration (FAA). Potential areas of exploration could include the creation of two separate government agencies or the formation of a quasi-governmental corporation.
- c) Reforming existing statutes, regulations, and policies.
- d) Reviewing the current mix of Airport and Airway Trust Fund taxes and fees and considering alternative sources that provide sufficient funding for services such as air traffic control and aircraft certification.

Ensuring the safety of the National Airspace System should be in the forefront of any initiatives to reform FAA funding streams and governance. Any support by NATCA must ensure the following:

- a) NATCA, as a stakeholder, must be included throughout the process, from inception to implementation. Further, any effort must be supported by NATCA's National Executive Board.
- b) Retention of Union recognition, representational status, and continuation of collective bargaining rights. This is achieved through the retention of 5 United States Code Chapter 71, however other similar legal frameworks may be considered.
- c) Protection of membership pay and benefits including, but not limited to, retirement and health care.
- d) NATCA must be included as a voting member of any governing board or body.

We have done our best to prepare for any scenario. We have advocated for all of the following pieces to be included in any change, although some would not be necessary depending on what model of reform, if any, were proposed. ?

- 1) NATCA would continue as the exclusive representative of those represented today, with nation-wide bargaining units. This is the same for all the unions in the FAA, it is not a NATCA only provision. (If there were a split between operations and safety/regulatory, we would continue to represent units in both areas.)?
- 2) Hybrid Labor Code (if it looked like it might go out of gov't) - FLRA would maintain jurisdiction, but NATCA (and the other unions) would have the negotiability rights of a private sector union, to allow NATCA to negotiate those matters covered by statute for the federal workforce but not covered by statute for private sector employees. ?
- 3) Dispute Resolution Process - Negotiations would be resolved through mediation, followed by binding arbitration for issues at impasse (this brings much better labor agreements than any ability to strike ever could). ?
- 4) Protections of CSRS, FERS, TSP, Survivor Annuity, and the ability to negotiate pensions in the case of a model outside of government.
- 5). Sick leave, annual leave, comp time, and credit hours all carry-over.?
- 6) Pay, compensation, and benefits remain in effect, including COLA to locality where occurring, and the ability to negotiate benefits in the case of a model outside of government. ?
- 7) Collective Bargaining Agreements, orders, rules, practices remain in effect until renegotiated. ?
- 8) Grievances, lawsuits, etc., continue in process.?
- 9) Workers' Compensation under the Federal employee program (FECA).?
- 10). Whistleblower protections.?
- 11) Liability protection: employee indemnification when acting in the course of their duty.?

12) Process for movement between new entity and regulatory FAA.?

13) Transitional Agreements to deal with the multitude of issues that would arise during any transition. Unresolved issues would be subject to the binding arbitration, dispute resolution process.

?a. Bi-Lateral - Between labor unions and the new entity?

b. Tri-Partite - Between labor unions, the new entity, and the safety/regulatory entity.?

14) Labor seats on the governance board.??

All of the above protections are in the bill that was just passed by the House Transportation & Infrastructure Committee. Considering all of these positive protections in the bill, it garnered our support. We also had to consider the bill's positives compared to the status quo in light of the issues that are crippling the FAA's ability to properly staff the system and preventing us from collectively enhancing safety and developing and implementing modernization.

We worked closely with the majority staff to ensure the above protections were included because Chairman Shuster was very clear he would be proposing a federally chartered not-for-profit corporation like NavCanada once he was successful in moving the Highway bill into law.

Certainly we looked at draft bills trying to ensure language that was good for the workforce and the system. We were a bit surprised when the Chairman indicated they were going to introduce it and swiftly hold a hearing and mark it up in committee last week. At that time there were still several outstanding issues that the majority staff were not going to include in the bill, so we were going to oppose it. The night before the Chairman introduced the bill, his staff added what we needed to the bill to ensure our members (not just ours but all of the unionized workforce) were protected.

The bill is not perfect and we will continue to work to improve upon it as it moves through the process. We are looking for improvement related to hiring, funding, and access, transition, and student loan forgiveness. During committee markup no harmful amendments were proposed that hurt us or the NAS and we didn't have to try and work to add language during that process because we were able to work through it upfront (before introduction).

We also worked closely with Ranking Member DeFazio's staff as we were expecting him to offer a proposal to create a government corporation to operate and regulate the NAS. We had to scrutinize that proposal just as closely to ensure that our members were protected and to ensure the wording was clear and couldn't be left open to harmful interpretation in the future. As an example, the dispute resolution provision in the 1996 FAA Reauthorization bill allowed the FAA to impose work rules, pay freezes and cuts, which we saw during the white book. We were able to fix this harmful provision in the 2012 FAA bill. But language like that is an example of the type of loophole that we have to guard against.

Unfortunately, DeFazio didn't have the support of the Democrats much less the Republicans for his proposal so he didn't introduce it. We then started working with him on an amendment to be introduced during committee markup. His amendment would strike the ATC not-for-profit corporation provision of the Chairman's bill and leave the operation of the NAS in the FAA, while taking the Airport and Airway Trust Fund (AATF) off budget and instituting FAA procurement and personnel reform. We supported DeFazio's amendment, but it failed. Congress has instituted FAA procurement and personnel reform in the past and their efforts yielded no tangible results. This was one of the reasons DeFazio's amendment failed.

Will the bill become a law?

The last FAA Reauthorization took five years and 23 extensions. New legislation, especially transformative reform usually doesn't happen within the Congress that it's introduced, especially when it is the second year of that Congress. That is another reason we were so thorough now with employee protections and labor rights. If the goal of the next Congress is to take us out of government, then we hope the language in this bill, with the employee protections and labor rights, is what is resurrected and reintroduced.

This bill has now passed the House Transportation and Infrastructure Committee. The next step is for the full House to debate, amend and vote on the bill. We have not heard exactly when this bill may have floor time in front of the full House of Representatives. The Senate has not yet moved on a corresponding bill. If the Senate was to pass a bill, and they were not identical, the committee leadership from the House and Senate would go to conference to reconcile the two bills. The reconciled version would then have to be passed by both chambers before the final bill would be sent to the President for signature. Political pundits give this bill a 9% chance of getting through the Senate. There are limited legislative days left this congress with elections right in front of us and the battle over replacing Supreme Court Justice Scalia will also take up much of the Senate's remaining time.

The current FAA authorization expires on March 31, so Congress will have to pass another extension. Extensions are also considered legislation, and when passed and signed by the President, become law. This is all the more reason to ensure we remain in the room and engaged. The extension is considered a "must pass" piece of legislation, which means there will be attempts to attach a number of things to it, including items not germane to aviation. If no bill or extension is passed then we will see a partial shutdown of the FAA as we did in 2011.

The reality in the FAA, why do we care about funding certainty?

Funding certainty is the biggest driver in all of this. We have not seen a Transportation, Housing and Urban Development or THUD appropriations bill signed into law since 2006 due to the partisan politics that prevent agreement. This has caused starts and stops in funding and, in 2013, a full government shutdown. The Budget Control Act (Sequester) still looms over us and the federal debt will ensure this debate continues.

A couple of our members have conveyed they are ok with furloughs as long as they stay federal employees. The reality is that it is not just about furloughs. Equipment isn't being maintained like it should, more of our facilities are in disrepair than are updated or new, new towers are not being built in places across the country that need ATC service (Leesburg, Va. is just one with 100 to 120K ops per year), low-activity towers are being considered for closure, and consolidations/realignment of facilities and services due to budgets instead of technological improvements, airspace efficiency, or enhanced safety are being discussed. Staffing is at an all time low across all bargaining units. 60% of the FAA workforce is eligible to retire and the agency's plans to keep up with attrition aren't working. Very soon the poor staffing in our large TRACONS will affect capacity. For example, N90 has 137 CPCs (59 of whom are eligible to retire) and 47 developmentals when their staffing should be at 226 CPCs. We are at a 27-year low for CPCs across the system (10,800 with 3,300 eligible to retire).

Most disturbing, Canada will soon have technology to reduce separation in the oceans. If the FAA doesn't get on board with this, or similar technology, Canada will provide that service, not us. There are no plans to replace MicroEARTs in Alaska, Hawaii, and San Juan. If that automation fails, then who would be best able to work all of that airspace? Us, or would it be Canada who has surveillance capabilities much better than ours? While this is not a concern for today, certainly in the next couple of years it will become a reality if the FAA doesn't get funded appropriately and focus on technology improvement and implementation. When members ask why we should care about modernization, this is why.

So while everything may seem great at a facility here or there, nationwide the infrastructure is in dismal shape, staffing is inadequate and bureaucracy stands in the way of improvement.

### Concerns about AIRR ACT

#### -Jobs and Protections

The FAA has contracted out a great deal of the work. We have contractors doing training, ATC (Contract Tower Program), weather observation, engineering, IT and the list goes on and on. We were not successful when we fought the contract tower program (both on the Hill and during our 17-year lawsuit), PASS was not successful fighting Harris taking over FTI and NAATS was not successful in preventing the contracting out of the FSS stations in the lower 48. Most of the contractor work that was being done in Transport Canada has migrated in-house to NavCanada now. That is the nature of a not-for-profit model. Contractors are there to make a profit and NavCanada found their workforce (under the not-for-profit) more capable and could more efficiently accomplish the work. The bottom-line is this bill gives us stronger rights and a bigger voice because of the hybrid labor code than we do under the Federal statute.

There are definitely fewer jobs in NavCanada than were in Transport Canada (now the regulator only). However, the job loss did not occur within the frontline workforce. The job loss occurred within middle management. Seventy-five percent of the FAA's management ranks are eligible to retire now, so the reduction in jobs there can easily be accomplished through attrition.

#### -Board of Directors (specifically airline dominance)

We do a very good job advocating before Congress and consulting with the White House. Yet we have no official say in any decision made by the Congress or the Administration at the DOT level. We have limited statutory bargaining rights in government with the FAA. However, there seems to be a perception among some that we have 50/50 voice in decisions made by the FAA. While we do collaborate more now with them than we ever have, we do not have any decision making authority. We have no say in who the Administrator, Deputy Administrator, COO, Deputy COO, VP Operations, Asst. Administrator for Human Resources or any number of the executives or managers below them will be. There are areas where the agency is required to bargain, there are areas where they can choose to bargain or not (permissive subjects of bargaining) and then there are management rights where they make the decision and we get to negotiate the

impact and implementation of that decision. Again we have worked hard at collaborating so we can be more involved in all things that affect the system and our membership.

Under the bill as proposed, the board seats cannot go to a member or employee of the associations or companies. The board's obligation is to the ATC system not the entity that appointed them. The board members are there to provide subject matter expertise on behalf of business aviation, aerospace manufacturers (both added during T & I committee mark-up), labor (ATC), labor (pilots), GA (two of them), Air Carriers (four of them), and Govt appointees (two of them). There is a concern from some of our membership that this is our only voice and we are outnumbered; this is not accurate at all.

The duty to bargain the many mandatory subjects of bargaining (which are greater in this bill than we have today) is separate from the board and our strongest voice. We collaborate now, not only because it is the right thing to do, but also because it gives us more of a voice. That would not change. The things that we can bargain would change, they would be greatly expanded in fact. So the bottom line is, we are a stakeholder on the board and also the representative for much of the workforce inside the corporation. We are also a representative of the workforce that would remain in the FAA so would have a voice there too.

#### -Not-for-profit to Profit

Concerns have been expressed that any not-for-profit model would eventually move to a for-profit model. If this proposed bill were to pass, then the law is clear that it is a federally chartered not-for-profit corporation similar to the American Red Cross or the Tennessee Valley Authority. For it to become a for-profit entity, a new law would have to be passed and NATCA would vigorously fight that!

#### -Funding in the Not-for-profit

The funding provisions will likely continue to change a bit as debate continues around who pays user fees, whether the system will be "given" to the not-for-profit, and what happens to the \$13 billion in the Airport and Airway Trust Fund (AATF). We will have to see how that plays out, but we will be working hard to ensure that funding in this legislation is steady, and dependable.

Today funding comes from a combination of taxes and fees paid into the AATF and appropriations from the United States Congress. Some of the taxes paid into the AATF never come back to aviation. There are lots of restrictions on the general fund's usage as well that make it hard, and some would argue impossible, for it to effectively go back into the infrastructure.

This bill currently funds the "Corporation" with a user fee system on airlines and commercial aviation users. User fees would be regulated and based on an ICAO formula of weight and distance. Also the Corporation would have borrowing and bonding authority to improve facilities and equipment, which the FAA does not have now.

Non-commercial General Aviation or GA, and all GA in Alaska and Hawaii, would continue to pay as they do today through the fuel tax, which would go to the general fund and those funds would be used to fund the FAA as the regulator.

The remaining AATF would fund airports.

As a monopoly, the Corporation will have self-sustaining income. The board will set the fees and charges in accordance with the ICAO policy. As a not-for-profit with significant regulation, the monopoly's powers will be well regulated.

#### -Legislative Activism

We will remain legislatively active to ensure that we continue to have a voice in Congress to communicate and advocate for needs of both the not-for-profit and the FAA as the regulator. We would still need to protect federal employee benefits, as they would transition with the workforce to the not-for-profit. We would also continue to represent employees in the FAA as the regulator and would need to protect changes to their benefits.

As we stated in the hearing last week, NATCA's support is contingent on keeping all of the protections that have been included in the bill. If at any time that changes, NATCA will not hesitate for a moment to give up support. If there are other attempts to fix the funding situation then we will support those after careful consideration.

We have to learn from the past. We have to be careful when we fight and with whom we fight. We have not always been successful, even when our fight was righteous. We lost the contract tower fight; NAATS lost FSS to Lockheed Martin and PASS lost FTI when it was contracted to Harris. The next Chairman may not give us the time of day, and the next President may not care about us. This is not just about what could happen now, but also about being prepared for what may happen in the future. We need to work with those who will work with us. That means we cannot start from "no." In the end, if the proposal doesn't meet our needs, our opposition will be measured and messaged in a way that shows the effect of such a bill on our members, the system, the economy, and safety.

This issue is very complicated and this is but one of many stages to go through before we know how this will all end up. We feel we have the support of the Convention body on this strategy, we have briefed the membership on the possible scenarios in many forums and meetings and sent our members dozens of updates. Taking a vote of the membership every time this bill changes is not reasonable and doesn't give us the ability to respond to developing situations in real-time. We were elected to make these very hard decisions. These are not easy decisions for any of us but we remain steadfast in our charge to protect our members while maintaining the integrity of the NAS - and we intend to succeed.