



PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS

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January 25, 2006

Dear Brothers and Sisters:

It has become apparent to me as I travel across Region III that members are interpreting the actions of PASS in many different ways, depending on their understanding of the current situation we are facing. It's extremely important we all have an awareness of the events that have combined to produce one of the most difficult and challenging environments that we have ever faced:

- The Federal Service Impasses Panel (FSIP) has refused to accept jurisdiction over impasses relating to FAA contracts in light of Section 347 of the 1996 DOT Appropriations Act. That same act also removed us from under virtually all of the Title 5 civil service system.
- The Bush administration is extremely hostile towards unions. One of the first things President Bush did upon taking office was to repeal all executive orders calling for a collaborative labor management relationship. Presidential appointees to the Federal Labor Relations Authority (FLRA) have been making unprecedented pro-management rulings, overturning important past precedent and reinterpreting law.
- The current situation our country faces as a whole can make any criticism of the president's agenda seem downright unpatriotic. Polarizing calls of "you're either for us or against us," aren't uncommon – from all sides. This can lead to deep misunderstanding.
- The FAA's agenda for contracting out segments of our mission, as evidenced by the automated flight service station contract, is moving slowly forward.
- The FAA's implementation of its version of a performance-based organization, the Air Traffic Organization (ATO), is disjointed and has become little more than another pointless FAA reorganization.
- Administrator Blakey has made it clear that she has declared war on FAA unions. Her organization's labor relations mantra has become, "We're taking back our rights." She has gone to the extreme of hiring a professional union buster as an executive on her labor relations staff.

It seems we meet opposition at every turn. None of these things is necessarily driven by another. Taken together, all these challenges seem to reinforce each other, making them appear even more daunting. We face tough times, even outright hostility. But, the situation is *far* from hopeless. This isn't a time for rashness. It's not the time for stirring up a mob mentality with unbridled rhetoric. It's not the time for vindictive words towards management or our own leadership. It's not the time for weakness or meekness. It *is* a time to calmly and methodically seek an understanding of the current situation and what we should do to ensure the best possible future in the FAA for us all. In times like these, unions are most relevant. Unfortunately, times like these can also lead to much frustration and dissatisfaction if our members don't fully understand the current situation and how it developed.

One of the basic strategies used by union busters is to attack everything, launching an assault against our rights to make the situation seem hopeless in the face of their onslaught. They are hoping we will give up or retreat instead of using our time to fully engage the system to defeat them. The legal system is slow. While often more effective, the political system can be even slower. Right now, the plan to weaken our rights has gained traction. The playing field was set for them by our loss of Title 5 and the slow but relentless pursuit of contracting out. However, if we remain strong and united, we can turn their agenda against them. In the end, lawmakers will listen to us. In the end, laws will be enforced or changed. In the end, we'll make a difference acting together – that's what a union is all about. Our strength is our toughness, our solidarity, our tenacity in seeing the right thing done.

Your PASS leadership is taking strong positive action to organize for the long haul ahead. We're reorganizing and revitalizing our chapters to present an effective legislative lobbying effort. We're tearing down internal obstacles that block communication throughout our organization. We're strengthening our ties between statewide chapters and our national organization to enable more effective collective action.

I've compiled a brief history and legal outline of the points listed above. While not exhaustive or scholarly, I think it provides a good basis from which to evaluate our current environment and how you can help make a difference in your future. Please take the time to read through and digest it. I'm certain it will take more than one reading and probably a little additional research through the Internet links I provided as a starting point. It is vital that you have a good grasp of this material to appreciate what PASS is accomplishing in these divisive times, and why we ask you to take certain approaches towards issues in your workplace.

Above all, remember and hold close the values on which this country was founded: liberty and democracy. We're being tested, folks. Our unity is being tested. Our opposition hopes we will tear our own organization apart through frustration, internal division and by just giving up. We're better than that.

Please call someone if you face a situation that seems untenable. Please call someone if something just doesn't make sense. Please call anyone in our organization you need to until you're comfortable with the answer, or at least until it seems reasonable. No one, I don't care who they are, knows everything about all facets of our work. We must work together, without barriers. Our opposition must know that we are strong and resolved to preserve and further our rights as working Americans.

***In solidarity,
Ray Baggett
Regional Vice President***

P.S. These mailings are costly. It's extremely important we have a current personal email address for you since that is our primary mode of immediate communication. Please send an email to regioniii@passnational.org with your correct address – even if you believe the one we have is correct.

PASS/FAA
LABOR-MANAGEMENT RELATIONS CLIMATE
JANUARY 2006

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SECTION 1: FAA EMPLOYEES LOSE TITLE 5 PROTECTIONS

What's Title 5?

United States law is indexed and published as United States Code (U.S.C.). U.S.C. Title 5 is titled *Government Organization and Employees*. This section of the law dictates how most regular civil service government employees derive their benefits.

For example, Section 6303 of Title 5 U.S.C. defines entitlement to annual leave.

5 U.S.C. § 6303 Annual leave; accrual

(a) An employee is entitled to annual leave with pay which accrues as follows—

- (1) one-half day for each full biweekly pay period for an employee with less than 3 years of service;
- (2) three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of service; and
- (3) one day for each full biweekly pay period for an employee with 15 or more years of service.

The Code of Federal Regulation (C.F.R.) is a topical index of rules enacted by executive departments and agencies of the federal government. Of course, these rules should comply with, and implement, U.S.C.

Since Title 5 U.S.C. (law) and Title 5 C.F.R. (rules) both pertain to the federal personnel system, you will often hear them referred to jointly as "Title 5." U.S.C. is *the law*. The C.F.R. is simply a listing of government-wide rules. Sometimes this distinction can be important.

Continuing with our example, Title 5 C.F.R. Chapter I, Part 630, addresses *Absence and Leave* for FLSA-nonexempt government employees. For example, Section 303 of this part specifies how part-time employees earn annual leave:

Code of Federal Regulations
TITLE 5: ADMINISTRATIVE PERSONNEL
CHAPTER I: OFFICE OF PERSONNEL MANAGEMENT
PART 630 – ABSENCE AND LEAVE – Table of Contents
Subpart C – Annual Leave

Sec. 630.303 Part-time employees; earnings

A part-time employee for whom there has been established in advance a regular tour of duty on 1 or more days during each administrative workweek, and a part-time employee on a flexible work schedule for whom there has been established only a biweekly work requirement, earn annual leave as follows:

- (a) An employee with less than 3 years of service earns 1 hour of annual leave for each 20 hours in a pay status.
- (b) An employee with 3 but less than 15 years of service earns 1 hour of annual leave for each 13 hours in a pay status.
- (c) An employee with 15 years or more of service earns 1 hour of annual leave for each 10 hours in a pay status.

The Internet links below are provided so you can browse the U.S.C and C.F.R. at your leisure to gain a better understanding of how laws and rules are set down and how they affect you. You may also want to take a look at:

29 U.S.C. Chapters 8, 12, and 15; 49 U.S.C. Chapter 40122; 20 C.F.R.; 29 C.F.R.; and 49 C.F.R.

How Did We Lose Coverage Under Title 5?

Three Pieces of legislation set up removal of Title 5 and the implementation of the FAA's own, unique, personnel management system (PMS).

- 1. PUBLIC LAW 104-50** (1996 DOT Appropriations Act): Ordered the FAA to create a new PMS and removed us from under Title 5.
- 2. PUBLIC LAW 104-122:** Our collective bargaining rights and access to due process of our grievances was ensured by restoration of 5 U.S.C. Chapter 71 to the PMS.
- 3. PUBLIC LAW 104-264:** Changed U.S.C. Title 49, pertaining to the administration of the Department of Transportation, to include final language for the new FAA PMS: 49USC§40122.

P.L. 104-50: CONGRESSIONAL MANDATE FOR A SPECIAL FAA PMS AND LOSS OF TITLE 5

In Section 347 of the 1996 DOT Appropriations Act, the FAA was ordered to develop a new personnel system. This act removed us from under most of Title 5. The act was

INTERNET RESOURCES



<http://uscode.house.gov/about/info.shtml>

<http://thomas.loc.gov>

www.gpoaccess.gov/uscode/index.html

www4.law.cornell.edu/uscode

www.opm.gov

www.gpoaccess.gov/cfr/about.html

www.access.gpo.gov/nara/cfr/cfr-table-search.html

www.access.gpo.gov/nara/cfr/waisidx_05/5cfr630_05.html

written into law as Public Law 104-50 by the 104th Congress in 1996:

Sec. 347.

(a) In consultation with the employees of the Federal Aviation Administration and such non-governmental experts in personnel management systems as he may employ, and notwithstanding the provisions of title 5, United States Code, and other Federal personnel laws, the Administrator of the Federal Aviation Administration shall develop and implement, not later than January 1, 1996, a personnel management system for the Federal Aviation Administration that addresses the unique demands on the agency's workforce. Such a new system shall, at a minimum, provide for greater flexibility in the hiring, training, compensation, and location of personnel.

(b) **The provisions of title 5, United States Code, shall not apply to the new personnel management system** developed and implemented pursuant to subsection (a), with the exception of –

- (1) section 2302(b), relating to whistleblower;
 - (2) sections 3308-3320, relating to veterans' preference;
 - (3) section 7116(b)(7), relating to limitations on the right to strike;
 - (4) section 7204, relating to antidiscrimination;
 - (5) chapter 73, relating to suitability, security, and conduct;
 - (6) chapter 81, relating to compensation for work injury; and
 - (7) chapters 83-85, 87, and 89, relating to retirement, unemployment compensation, and insurance coverage.
- (c) This section shall take effect on April 1, 1996.

We've already seen that our entitlement to annual leave for regular civil service employees is found in 5 U.S.C. 6303. As you've probably already noticed, Section 6303 was not retained as part of the FAA personnel system.

The first web link provided in the Internet resources box will take you to the FAA Personnel Management System (PMS) that resulted from this legislation. You can see there that the FAA elected to retain some additional sections of Title 5 not specified by Congress. Again, Section 6303 was not one of them.

P.L. 104-122: FEDERAL COLLECTIVE BARGAINING RIGHTS RESTORED

Chapter 71 of Title 5 is where we derive our right to collectively bargain and have union representation. This section wasn't retained as part of the PMS in the first piece of legislation we examined. The only portion of Chapter 71 retained was the part making strikes illegal.

The FAA's Internet page implies that it voluntarily retained Chapter 71 in the new PMS. However, it's really mandated by Public Law 104-122, a joint resolution of the House and Senate (H.J. Res. 170). That resolution contained the language:

...section 347(b)(3) of Public Law 104-50 is amended to read as follows: "(3) chapter 71, relating to labor-management relations;"

INTERNET RESOURCES



www.faa.gov/ahr/policy/PMS/pmsintro.htm

www.gpoaccess.gov/plaws/index.html

www.tsa.gov/interweb/assetlibrary/49_USC_Chapters_401_to_501.pdf

Referring to P.L. 104-50, you can see that the Act was amended from retaining *just* the language prohibiting strikes to retain Chapter 71 in its entirety regarding labor-management relations. This law was passed after a congressional lobbying effort by PASS.

P.L. 104-264: THE FINAL MANDATE FOR THE FAA PMS IS WRITTEN INTO LAW

Another notable piece of legislation involving the Act is P.L. 104-264. It contains the following language modifying Chapter 401 of Title 49 U.S.C:

SEC. 253. FEDERAL AVIATION ADMINISTRATION PERSONNEL MANAGEMENT SYSTEM.

Chapter 401, as amended by section 252 of this Act, is further amended by adding at the end the following:

Sec. 40122. Federal Aviation Administration personnel management system

(a) In General –

(1) Consultation and negotiation. – In developing and making changes to the personnel management system initially implemented by the Administrator of the Federal Aviation Administration on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the Administration certified under section 7111 of title 5 and consult with other employees of the Administration.

(2) Mediation. – If the Administrator does not reach an agreement under paragraph (1) with the exclusive bargaining representatives, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement. **If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Administrator's proposed change to the personnel management system shall not take effect until 60 days have elapsed after the Administrator has transmitted the proposed change, along with the objections of the exclusive bargaining representatives to the change, and the reasons for such objections, to Congress.**

(3) Cost savings and productivity goals. – The Administration and the exclusive bargaining representatives of the employees shall use every reasonable effort to find cost savings and to increase productivity within

each of the affected bargaining units.

(4) Annual budget discussions. – The Administration and the exclusive bargaining representatives of the employees shall meet annually for the purpose of finding additional cost savings within the Administration's annual budget as it applies to each of the affected bargaining units and throughout the agency.

This language addresses what happens when we reach impasse negotiating over changes to the PMS with the FAA. As you can see, no action by Congress is mandated in the 60 days following notification.

Litigation is pending with the United States District Court of Appeals regarding what happens when we reach impasse after bargaining over anything having to do with the FAA PMS. Usually, the Federal Service Impasses Panel (FSIP) intervenes when impasses are reached during collective bargaining under Chapter 71 of Title 5. As you saw above, this Chapter of Title 5 was specifically retained in the FAA PMS by law. The FSIP has refused to intervene concerning impasses regarding several national contract negotiations with PASS and NATCA. A ruling from U.S. District Court basically threw the issue back to the Federal Labor Relations Authority (FLRA), of which the FSIP is a part, implying that an unfair labor practice of failing to negotiate in good faith could be at issue. NATCA has joined PASS in disagreeing with this interpretation of events. We believe the parties negotiated in good faith, impasse was reached and we are now due full due process under Chapter 71 of Title 5, including the services of the FSIP. It could be some time before the issue is completely resolved.

Implications of the Loss of Title 5 Coverage

The discussion regarding annual leave may have left you wondering who ensures the administrator keeps annual leave accrual at current levels. The truth is, no one. The amount of annual leave we accrue is now determined solely by the FAA PMS. You may be thinking, Hey, the union should have something to say about that! Once again, you'd be correct.

Remember P.L. 104-122? One small sentence ensured we retained all of our statutory rights to collectively bargain over changes in the personnel system. I hope you're beginning to sense how important it is to have an effective congressional lobbying effort. Our rights, and work world, can come crashing down like a house of cards if we're not able to influence members of Congress. If the FAA can simply drive negotiations to impasse, without the oversight of something like the FSIP, it can effectively implement any provision to the PMS by simply informing Congress of its intention per P.L. 104-50, the legislation that gave us FAA personnel system reform.

Virtually all of your wages and benefits would be at the sole discretion of the FAA's administrator were it not be for the retention of our rights to collectively bargain under Chapter 71 of U.S.C. Title 5. I challenge you to think of any benefit you have as an employee, review Title 5 U.S.C. (third link in box on page 2) to locate the section number regarding the benefit, determine if that section of Title 5 was retained by checking the FAA PMS (first link in box on page 3), and then review the AF/PASS contract to see if it is provided for there. You may be surprised how many things are covered in the contract.

INTERNET RESOURCES



[www.govexec.com/dailyfed/0203/
020503a1.htm](http://www.govexec.com/dailyfed/0203/020503a1.htm)

SECTION 2: EXECUTIVE BRANCH SETS TONE FOR FEDERAL SECTOR LABOR RELATIONS

Management's Rights

As we saw from the review of the law in the last section, we've retained our rights to collectively bargain under 5 U.S.C. Chapter 71. It's important to understand our basic rights. The Chapter is too broad to discuss in its entirety here. Each of you should read the entire Chapter, using the first link provided below.

For now, we'll examine one of the most pertinent sections concerning the ability of PASS to bargain over changes in your workplace. The second link in the box below is also to the FLRA website. It explains bargaining in the federal sector to a greater extent than we'll get into during our brief examination here.

5 U.S.C. 7106

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

- (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
- (2) in accordance with applicable laws—
 - (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
 - (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
 - (C) with respect to filling positions, to make selections for appointments from—
 - (i) among properly ranked and certified candidates for promotion; or
 - (ii) any other appropriate source; and
 - (D) to take whatever actions may be necessary to carry out the agency mission during

This section is commonly referred to as the *management's rights* section. This section sets forth some areas in which bargaining between the union and the agency is prohibited. As a matter of fact, even if the FAA chooses to bargain with the union around any of these areas, any agreement reached would not be enforceable as it would be contrary to law. You may be thinking that this covers just about everything regarding the workplace, in one manner or another. Once again, you'd be correct. Depending on how you look at any proposal, it could probably be construed to fall in one of these categories. There is an entire discipline in federal labor relations concerning *negotiability*.

There are volumes of cases that the FLRA has reviewed to determine if proposals violate any of these inherent management rights. The third link in the Internet resources box is for your use in exploring negotiability further.

Limits on Management's Rights

Fortunately, there are some limitations put on management's rights. 5 U.S.C. 7106(a), that we just reviewed above, began with the phrase: "Subject to subsection (b) of this section." Let's take a look at subsection b:

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

- (1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
- (2) procedures which management officials of the agency will observe in exercising any authority under this section; or
- (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

This subsection provides for collective bargaining around portions of management's rights. Our bargaining rights vary depending on the subject area and scope of the proposal.

Subsection 7106(b)(1) refers to what is commonly known as *permissible* subjects of bargaining. If management chooses to negotiate these matters, they may. For example, 5 U.S.C. 7106(a)(1) prohibits bargaining over the number of people employed by the agency. However, 5 U.S.C. 7106(b)(1) allows the agency to bargain with PASS around the number of employees assigned to any organizational subdivision. That's why our agreement that the Air Traffic Organization (ATO) will maintain a staffing level of 6,100 is legal. The ATO is a subdivision of the FAA.

One of the areas members want to negotiate around most often is the technology, methods and means of performing work. For example, most changes to technical handbooks are changes that fall under

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www.flra.gov/statutes/fslmrs/fslmrs.html

www.flra.gov/gc/b_scop_m.html

www.opm.gov/lmr/flra/index.asp

methods and means of performing work. The various automation systems the FAA is beginning to implement is another area of methods and means of performing work. While the LDR system may be totally inadequate for what we believe it is intended for, the use of it is not negotiable unless the agency elects to negotiate around it. If the agency elects to enter into bargaining around these areas, they may, but we cannot force them to, at least not with a legal argument.

Sometimes, we'll propose the use of specific test equipment, actual equipment choices or equipment configurations. In an office environment, we may want to specify a particular kind of information technology or telephone system. These proposals will most often fall into the permissible bargaining area of *technology*.

You'll also see that *tours of duty* are included as a permissible area of bargaining. This is a good point to begin discussing subsection 7106(b)(2). While the actual decisions management makes that are included in the prohibited or permissible areas are nonnegotiable, the **procedures** they use to implement those decisions are. For example, management determines what the staffing and operational coverage requirements are for work centers. However, the procedures for establishing specific work schedules are provided in Article 50 of the contract.

Section 7106(b)(3) gives us the right to propose and bargain around **appropriate arrangements** for employees impacted by a decision of management, even though 7106(a) dictates that we have no right to bargain over the decision itself. For example, if an office is relocated 60 miles away from its present location, the union may want to propose that impacted employees be allowed to telecommute three days a week, instead of being forced to change residence, as an appropriate arrangement to mitigate the negative impact of having the office relocated.

How the Executive Branch of Government Can Set the Tone for Labor-Management Relations

Departments of the federal government, such as the Department of Transportation, fall under the purview of the executive branch of government, the authority of the president. On October 1, 1993, President Bill Clinton signed Executive Order (E.O.) 12871. This order instructed departments of government to develop collaborative relationships with unions. He instructed departments to bargain the *permissible* areas enumerated in 5 U.S.C. 7106(b)(1):

... The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

... (d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same;

While unions had no right under law to force the FAA to bargain around things such as changes regarding technology, their boss, the president, ordered them to do so.

One of the first things President George W. Bush did when assuming office was to repeal E.O. 12871:

Executive Order 13203 of February 17, 2001
Revocation of Executive Order and Presidential Memorandum Concerning Labor-Management Partnerships

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that:

Section 1. Executive Order 12871 of October 1, 1993, as amended by Executive Orders 12983 and 13156, which established the National Partnership Council and requires Federal agencies to form labor-management partnerships for management purposes, is revoked.

During the Clinton administration, PASS was able to expand our liaison program in Washington, D.C., thereby influencing many issues usually not negotiable. Management was motivated to work out issues up-front rather than letting them linger. Fixing them sooner was easier than negotiating later.

One of the important points you should have realized from browsing the FLRA website is that the FLRA also falls under the executive branch of government. The FLRA is administered by presidential appointees. The FSIP, which is supposed to resolve impasses resulting from collective bargaining in the federal sector, is a branch of the FLRA. Members of the FSIP are also presidential appointees.

As you can see, the executive branch of government not only has a great deal of influence in setting the tone of labor-management relations, it virtually controls it. Many of the areas in which PASS was able to exert influence during the Clinton administration are now closed to us. Indeed, as we'll see in the next section, the pendulum has swung to an extreme.

SECTION 3: CURRENT THREAT TO YOUR COLLECTIVE BARGAINING RIGHTS

Federal sector unions face unprecedented challenges. FAA Administrator Blakey has made it quite clear that war has been declared on you, her employees. Management's mantra is "We're taking back our rights." The reality is that they're trying to undo, or at least circumvent, your right to collective bargaining and resolution of your grievances by a third party.

The FAA's agenda is an extension of the Bush administration's efforts to roll back labor-management relations advances made since the 1950s. The first link in the Internet resources box provided at the right is to a 2004 article by AFGE Deputy General Counsel Charles A. Hobbie. From that article:

Since the issuance in 1993 of the Committee's Report, which coincided with what may in retrospect be deemed the "high water mark" of federal collective bargaining rights, the United States Government has acted to eviscerate for many federal employees even the limited rights possessed at that time. Within weeks of his inauguration in January, 2001, President George Bush revoked the National Partnership Council initiative, effectively "thumping his nose" at the recommendations of the Committee's Report and signaling clearly that his administration would undertake a sustained attack on the right of federal employees to bargain collectively. Indeed, subsequent Government actions have launched an unprecedented assault on collective bargaining and freedom of association in the federal sector, under the guise of government structural adjustment and in the name of national security (where U.S. courts generally do not have jurisdiction to challenge such actions).

In this regard, the federal public sector has become the direct target of the government's increasingly anti collective bargaining policies of the past three years. For example, in 2002 the Bush Administration took away collective bargaining rights from approximately 1000 federal employees in the U.S. Attorneys' offices — rights these employees had exercised for almost three decades - in the name of national security. The administration then succeeded in obtaining legislation to eliminate meaningful collective bargaining rights for the 170,000 federal employees in the new Department of Homeland Security (DHS) — again in the name of national security. The Bush administration has further refused to provide about 56,000 federal airport baggage screeners in the newly created Transportation Security Administration (TSA), which is part of DHS, with civil service rights and employee benefits, including workers compensation, veterans preference, equal employment opportunity rights, and the right to union representation. Only twenty days after the TSA decision, the current administration terminated the long-standing collective bargaining rights of over 2000 cartographers, digital imaging specialists, secretaries and security guards in the National Imagery and Mapping Agency (NIMA).

As its showpiece, and most significantly, the Bush administration has signed into law legislation that eliminates meaningful collective bargaining rights in the Department of Defense, which is by far the largest federal civilian agency. *The Civil Service and National Security Personnel System Act* places almost 700,000 civilian Department of Defense employees under a completely new personnel system, *without* the effective collective bargaining and union representation rights these employees have enjoyed for many decades. As its name demonstrates, the act's justification is national security.

...

Concerning the Government's omnipresent rationale for taking whatever actions it wishes, the past twenty-five years under the FSLMRS establish undisputedly that the right of government employees to be represented by a union and engage in collective bargaining *has never been proven to be a threat of any kind to national security.*

Moreover, under current American law, the United States government has the authority to act quickly if necessary. Thus, American law (5 U.S.C. §7532) authorizes the head of any federal agency to *immediately* suspend and remove a federal employee without pay when he or she poses a national security threat. Federal agencies do not use this provision often, not because it is not effective but because there have been very few cases where its use was warranted. As with other nations, American federal and other public service employees — such as the fire fighters, police, medical personnel, and other first responders at the scenes of the September 11, 2001 attacks in New York City and Washington, D.C. — are loyal professionals who take their jobs of public service very seriously. Additionally, the FSLMRS (5 U.S.C. §7106(a)(2)(d)) expressly preserves the "authority of any management official of any agency — to take *whatever*

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www.afge.org/Index.cfm?Page=UnionBlog&FuseAction=View&BlogID=47&Type=U

www.aflcio.org/aboutus/thisistheafclcio/ecouncil/ec02272003f.cfm

actions may be necessary to carry out the agency mission during emergencies.” No one has ever disputed that this management right supercedes collective bargaining rights in emergencies.

In sum, recent United States Government actions by Presidential Executive Order, legislation, and agency orders have unreasonably prevented hundreds of thousands of otherwise eligible federal employees from enjoying the right of collective bargaining under the FSLMRS and under ILO Conventions Nos. 87, 98, and 151. The Government clothes its prohibitions in the well worn, false guise of American “national security.” Such conduct by President Bush and the United States Government should be recognized for what it unequivocally is: an unjustifiable violation of American public servants’ right to freedom of association, right to organize, and right to bargain collectively.

The first link in the Internet resources box to the right is to the International Labor Organization’s (ILO) homepage. The second link is to an article about the union-busting techniques of Joseph Miniace, the FAA’s new deputy assistant administrator for Strategic Labor-Management Relations. If you take the time to type *Joseph Miniace* into your web search engine, you can learn more about Mr. Miniace and his methods.

The following points are excerpts from notes taken during an ATO management pep rally held in Washington, D.C., a few days after Katrina struck the gulf coast. Hopefully, they will help put the topics we just discussed into a current perspective.

- Costs to internal customers (employees) are extremely expensive. We need to ask ourselves, do we need all the things we do?

- Negotiation Goals: Elimination/Reduction of MOUs; Preserve and restore management rights. We are not looking to be in a partnership with labor, no joint management; more focus on FAA interests.
- Move to get official time into compliance with the contract.
- Returning Liaisons to the field.
- MOUs take away management rights.
- Permissive Subjects: Agency may choose to bargain on numbers, types and grades, technology, methods, and procedures. We will no longer go down that path. We will not bargain these rights.

INTERNET RESOURCES



www.ilo.org/public/english/standards/norm/index.htm

www.thenation.com/doc/20021028/bacon

SECTION 4: SUMMARY/FUTURE ACTION

I hope that this paper has shed a little light on the current situation PASS faces today. As you see, there is no single issue at play. Therefore, there is no “silver bullet” to returning labor-management relations in the FAA to an even keel. There are some vital areas we must concentrate on over the next few years:

1. Legislative Activity

Legislation is the primary driver of our ability to collectively bargain and preserve a decent workplace. We must be able to influence members of Congress to author and sponsor legislation that supports our collective bargaining rights and prevent legislation that undercuts those rights. It's important that your congressional delegation knows what we do, and how it relates to the safety of the National Airspace System (NAS).

- Develop local relationships with your congressional delegation. Invite them and their aides to visit your facilities.
- Participate in local political fund raisers (your chapter Legislative Committee can assist you.)
- Don't forget your politicians. State and local officials can wield great influence over decision makers.
- Attend local AFL-CIO labor council meetings. Politicians often attend these meetings to gain a sense for what's important to their labor constituency.
- **WARNING:** All federal employees are subject to the Hatch Act. Keep any activity relating to partisan politics out of the workplace. Keep conversations focused on legislation – stay away from talking about elected officials themselves, their campaigns, any activity (such as fund raising) and their views on issues. Keep this out of work email messages as well. This is one of the primary reasons that it is so important to conduct meetings off federal property.

2. Contract Integrity

It's imperative that we ensure the agency honors agreements they've made with us. In the past, some contract representatives felt they could bend to management pressure to relax work rules at their specific location in order to preserve the appearance of a “collaborative” relationship. We must support our contract representatives in ensuring all agreements are honored. Once we start trying to pick and choose which parts of which agreements we enforce at individual locations, we lose organizational integrity and end up countering each other's efforts.

Management has made it very clear that they don't want a collaborative environment where we discuss permissible subjects of bargaining. We must be just as strong in insisting strict compliance with agreements reached around what they *must* negotiate. The FAA has declared

collaboration dead. While not our decision, and one I personally think is terribly misguided, we must accept reality and move constructively forward. We can conduct our business without open divisiveness, if allowed. That said, we must be ready, and willing, to stand strong and uphold ALL agreements in the face of strong-arm tactics and pressure from local managers to just go along to get along.

We can't preserve and improve at the national bargaining table what has already been ceded at the local level.

3. Teamwork

We can't afford to operate in the same manner as the bureaucratic organization for which we work. The days of strict adherence to a stovepipe communication system are over. We must all communicate with each other as never before. Representatives and chapter officers must be comfortable with any member talking to any other member, representative or officer of PASS regarding any issue, at any time.

Things change in the labor-management world daily. A single decision from the FLRA or an arbitrator can make a huge difference in how we approach an issue. New members of Congress can be more open or resistant to change. We must work together so we are all applying our efforts toward the best results possible. We must all pitch in as we can. We must all engage in activity with our chapters.

4. Multifaceted Approach

PASS's mission is not to “do battle” with management constantly. Nor is it to prove how helpful we can be in assisting management in solving their managerial problems.

PASS's mission is to help members find solutions to workplace issues. Sometimes, this can be accomplished through grievances and litigation. Other times, it can only be done through political pressure or the writing of new laws.

We must be willing to reach out to a diverse cross section of people and organizations that have reasons, perhaps different from ours, to support us in our endeavors. We must also support these organizations when we can.

We must all find a niche in the organization in which to contribute. One of the most effective ways to do this is engaging in chapter activity.

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www.passnational.org/Regions/RegionIII/region_iii.shtml

www.passregion3.org/index.html

www.passnational.org

INTERNET RESOURCES

<http://uscode.house.gov/about/info.shtml>

<http://thomas.loc.gov>

www.gpoaccess.gov/uscode/index.html

www4.law.cornell.edu/uscode

www.opm.gov

www.gpoaccess.gov/cfr/about.html

www.access.gpo.gov/nara/cfr/cfr-table-search.html

www.access.gpo.gov/nara/cfr/waisidx_05/5cfr630_05.html

www.faa.gov/ahr/policy/PMS/pmsintro.htm

www.gpoaccess.gov/plaws/index.html

www.tsa.gov/interweb/assetlibrary/49_USC_Chapters_401_to_501.pdf

www.govexec.com/dailyfed/0203/020503a1.htm

www.flra.gov/statutes/fslmrs/fslmrs.html

www.flra.gov/gc/b_scop_m.html

www.opm.gov/lmr/flra/index.asp

www.afge.org/Index.cfm?Page=UnionBlog&FuseAction=View&BlogID=47&Type=U

www.aflcio.org/aboutus/thisistheafclcio/ecouncil/ec02272003f.cfm

www.ilo.org/public/english/standards/norm/index.htm

www.thenation.com/doc/20021028/bacon



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