STATEMENT OF

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COALITION OF AIRLINE PILOTS ASSOCIATIONS

BEFORE

THE COMMERCIAL AND ADMINISTRATIVE LAW

SUBCOMMITTEE

OF

THE COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

DECEMBER 3, 2009

CORRECTING A DISPARITY BETWEEN RAILROAD AND AIRLINE EMPLYEES IN CHAPTER 11 BANKRUPTCY

Good morning, Chairman Cohen, Ranking Member Franks and members of the Subcommittee. Thank you for the opportunity to testify today. I am Robert Coffman, Director of Government Affairs for the Coalition of Airline Pilots Associations, and a captain for American Airlines. CAPA is the largest airline pilot trade association in the world and represents more than 28,000 professional pilots from six unions, including the Allied Pilots Association, the Association of Shared Aircraft Pilots, the Independent Pilots Association, the Southwest Airlines Pilots Association, the Teamsters Local 1224 and the US Airline Pilots Association.

On behalf of our members, I want to address the urgent need to correct an unfair difference in the way airline employees are treated in Chapter 11 bankruptcies from rail employees covered under the Railway Labor Act.

In bankruptcy filings, railroad labor contracts administered under the Railway Labor Act cannot be unilaterally abrogated, while airline labor contracts under the RLA are subject to judicial abrogation. This unintentional disparity in the Bankruptcy Code has resulted in numerous airline labor agreements being gutted in bankruptcy courts, with only cursory attempts made to collectively bargain a concessionary contract with input from the affected labor group.

As a direct result, there have been thousands of lost airline jobs and billions of dollars in lost wages, benefits and pension cuts.

Airline Bankruptcies: Necessity or Economic Opportunity?

Bankruptcy has become a standard course of business for the airline industry. Since industry deregulation in 1978, there have been more than 100 airline bankruptcies, with some airlines declaring bankruptcy more than once.

Of the six legacy carriers, four have filed for bankruptcy since 2000. There have been more than 40 airline bankruptcies overall in this decade alone.

The process has become an economic opportunity rather than a final attempt to survive. It’s become a way to negate a company’s contracts, to erase a union’s hard-fought gains in pay and working conditions made over decades of collective bargaining.

It's been called the new collective bargaining weapon, a union-busting tool used to abuse workers and force extraction of concessions that are otherwise unachievable in consensual bargaining.

In the railroad industry, management must negotiate with its workers during the bankruptcy process. The railroad industry is covered by a provision of the Bankruptcy Code, § 1167, which mandates that management cannot reject railroad labor contracts during the bankruptcy process without following the provisions outlined in the RLA. So, unlike airline managements, railroad management cannot use Chapter 11 to reject labor contracts unilaterally as part of a financial reorganization.

The courts have ruled that § 1167 does not apply to airlines, even though it is the only other industry covered by the RLA. Therefore, airlines may reject their labor contracts in bankruptcy by following the provisions prescribed in § 1113 of the Bankruptcy Code.

Under § 1113, airline management only needs to show that changes to a CBA are necessary for a reorganization – and the legal burden is placed on labor to prove otherwise. [1]

And although § 1113 does require an attempt to negotiate, the bar to satisfy that requirement falls far short of the formal process required under the RLA, and the requirement to be met in a rail bankruptcy. Recent history shows that airline managements have almost always been able to get court approval to reject their labor agreements.

A Powerful Advantage

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[1] Mark C. Stephens, NOTE AND COMMENT: LOSING LIFT AND CREATING DRAG! THE EFFECT OF NATIONAL MEDIATION BOARD EXECUTION AND RAILWAY LABOR ACT COURT DECISIONS ON THE COLLECTIVE BARGAINING PROCESS IN THE AIRLINE INDUSTRY: A UNION PERSPECTIVE, 15 Tex. Wesleyan L. Rev. 141, 4 (2008).

Since 2002, the managements of nearly all major carriers with the exception of Southwest Airlines have used bankruptcy or the threat of bankruptcy to wrest enormously concessionary contracts from unions – a process that also included the termination of defined benefit pension plans.

To add insult to injury, these same airline managements have used bankruptcy or the threat of bankruptcy to enrich themselves. For example, a recent Government Accountability Office study showed how in the years leading up to the termination of two underfunded airline pension plans, executives received more than $175 million in compensation, an amount that was the same order of magnitude as the pension funding shortfall. This level of executive compensation requires a certain degree of underlying financial health, indicating that bankruptcy has sometimes been used as a tool of convenience, rather than as a last-ditch effort to survive.

For example, in early 2003, American Airlines told its unions that it would declare bankruptcy on a specific date absent membership assent to highly concessionary changes to their contracts. All three unions acquiesced rather than face the possibility of judicially approved rejection of the contracts as a result of § 1113.

US Airways, Delta, United, Northwest and Continental were also able to leverage labor concessions worth billions of dollars individually, and tens of billions industry-wide, simultaneously placing a precarious burden on the already stressed Pension Benefit Guaranty Corporation.

Clearly, the capability to exploit this disparity in bankruptcy proceedings grants an airline management a tremendously powerful advantage over its union. The company can threaten its union to acquiesce to its demands – or else. After bankruptcy is declared, it ceases to be a negotiation and instead becomes a unilateral imposition of threats and demands. The balance of negotiating power between a management and its employees simply evaporates.

Corrective Legislation Urgently Needed

Management's ability to reject CBAs as part of the bankruptcy process has been devastating for airline labor agreements. Unions have been essentially left with no choice but to negotiate

extremely concessionary agreements in the face of the potentially worse option of wholesale rejection of the CBA under § 1113. The mere threat of bankruptcy proceedings is generally enough to get labor unions to agree to extraordinarily concessionary deals, because the courts have demonstrated that they typically allow management to reject labor contracts without any counter-balancing prospect of labor self-help.

CAPA believes that corrective legislation is urgently needed to remedy this disparity and stop the abuse of the bankruptcy process that has resulted in devastating the careers and lives of thousands of airline workers over the years.

We therefore ask that legislators give airline workers the same protection that railroad workers are currently afforded by aligning the relevant portions Bankruptcy Code. This disparity, one that probably could have in times past been rectified with a simple technical correction act, has enabled airline management to void decades of collective bargaining. This legislative fix would mandate use of the RLA negotiating process before management could reject a collective bargaining agreement. CAPA believes that a negotiated solution – rather than one that is imposed – is always in the best interest of all concerned.

Chairman Cohen, Ranking Member Franks and members of the committee, thank you for the opportunity to testify here today. I am happy to answer any questions you have.