International Brotherhood of Teamsters

Testimony Before The

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Committee on the Judiciary

Subcommittee on Commercial and Administrative Law

"Protecting Employees in Airline Bankruptcies"

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PROBLEM DEFINED
AIR CARRIERS' ABUSE OF THE BANKRUPTCY CODE
TO TERMINATE EMPLOYEES' PENSIONS AND OUTSOURCE THEIR JOBS

The United States airline industry has been in a relatively constant – and very publicly visible -- state of financial turmoil since the fall of 2000, when the decline in the technology industry caused a precipitous decline in business travel demand. The September 11, 2001 terrorist attacks greatly exacerbated the industry's financial troubles, as airlines incurred significant losses resulting from the temporary shutdown of the nation's airspace and passengers' apprehension about flying following the attacks.

Congress sought to alleviate the airline industry financial crisis shortly after the September 11 attacks, when it passed the Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, 115 Stat. 230 (2001). Through that statute, Congress provided $5 billion in direct emergency assistance/grants to compensate air carriers for their losses stemming from the attacks. Congress also authorized the Department of Transportation to reimburse air carriers for increases in their insurance premiums and provided billions of additional dollars for loan guarantees.

Nevertheless, in the wake of record high fuel prices earlier this year and the Depression-era crash of the nation's financial markets, the airline industry appears still to be in economic distress, and is projected to lose $5.2 billion this year. Despite passenger capacity reductions and recent cuts in fuel costs, the turbulent economic markets may continue to wreak havoc upon the industry. Indeed, although Congress has provided significant public assistance to the airline industry over the last several years, it may have to provide even more next year.

In its deliberations, however, Congress should consider certain disturbing events and trends over the last several years that could further destabilize the industry if they continue unabated. Congress should, for example, consider and further examine the airline industry's use of years-old net operating losses to paper over its more recent years' profits, thereby avoiding in large part the payment of taxes.

Additionally, Congress should consider and further examine the fact that since it received generous taxpayer grants and stabilization loans, the industry has largely terminated the defined benefit pension plans covering its employees. In several highly publicized instances, large carriers such as United Airlines relied upon United States Bankruptcy Code Section 1113 to reject their collective bargaining agreements in order to slash their employees' wages and terminate their pension plans. While using the Bankruptcy Code to walk away from their pension plan funding obligations, these airlines shifted their liabilities to the Pension Benefit Guarantee Corporation and the United States taxpayers and caused huge reductions in the affected employees' retirement benefits.

Furthermore, many of the carriers that received United States Government grants ands stabilization loans in 2001 have, since that time, increasingly outsourced critical, highly skilled airline maintenance jobs to foreign repair stations. Indeed, according to the DOT Inspector General's September 30, 2008 report on the outsourcing of aircraft maintenance, airlines have more than doubled the amount of repairs and heavy maintenance work they outsource, from 34% in 2003 to 71% in 2007. The increased foreign outsourcing of these and other airline jobs has contributed significantly to the dramatic loss of jobs in the United States airline industry.

As has been the case with respect to the termination of their defined benefit pension plans, several carriers have relied upon Bankruptcy Code Section 1113 in order to accomplish their foreign outsourcing objectives. Frontier Airlines, a low-cost carrier based in Denver, Colorado is a recent example. Despite its already competitive labor costs, Frontier petitioned a United States Bankruptcy court in New York City to reject its collective bargaining agreement covering its aircraft mechanics so that it may permanently outsource its Denver-based heavy-check maintenance operations to a company located in El Salvador. Faced with the prospect of losing their jobs entirely or slashing their wages to below-market rates, the mechanics agreed to slash their wages. But Frontier still was not satisfied. Frontier used the Section 1113 process to exact even

greater wage concessions from the mechanics and to obtain an order from the Bankruptcy Court authorizing it to permanently outsource the mechanics' work to El Salvador.

OBJECTIVE

Our objective is to participate constructively in a long-overdue dialog seeking comprehensive solution to the financial and structural problems that plague the airline industry. Any such dialog is significantly impaired under the existing provisions Bankruptcy Code, however, because the Code has been used by the carriers to slash, cut and dump their employees' wages and benefits. In order to prevent the further abuse of the Bankruptcy Code, we recommend that airline carriers covered by title II of the Railway Labor Act (RLA) be treated the same as their counterparts in the railroad industry. Rail carriers are covered by title I of the RLA and are exempted from Bankruptcy Code Sections 1113 and 365. Accordingly, we recommend that air carriers likewise be exempted from the provisions of Sections 1113 and 365. Both of these statutory provisions have been used by carriers to reject collective bargaining agreements in order to outsource skilled and highly critical jobs overseas and to terminate their employees' defined benefit pensions. The continued abuse of these statutory provisions serves only to further destabilize the industry. Accordingly, we recommend the following amendments to the Bankruptcy Code:

RECOMMENDED AMENDMENTS

11 U.S.C. § 1113(a) is amended as follows:

(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section. Notwithstanding any provision in this section or any other section of U.S. Code Title 11, a debtor in possession or trustee of a debtor covered by title II of the Railway Labor Act

may not assume or reject a collective agreement covered by such Act, and the wages or working conditions of employees covered by such collective agreement may only be changed or modified in accordance with section 6 of such Act.

11 U.S.C. § 365(a) is amended as follows:

Except as provided in sections 765and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor. Notwithstanding any provision in this section, with respect to a debtor covered by title I or title II of the Railway Labor Act, neither the court nor the trustee may change the wages, or working conditions of employees of the debtor established by a collective agreement that is subject to such Act except in accordance with section 6 of such Act.