



DAILY LABOR REPORT



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Airlines

'Rescue on the Hudson' Pilot, Unions Urge Better Labor Protections in Bankruptcy Law

Airline employees covered by collective bargaining agreements are especially vulnerable to pay, benefit, and other cuts demanded by carriers in Chapter 11 bankruptcy, celebrated US Airways pilot Chesley B. "Sully" Sullenberger told members of Congress Dec. 16.

Sullenberger, a pilot for 42 years who was credited with saving the lives of all 155 passengers aboard a flight in January in an emergency splash landing in the Hudson River, was joined by the US Airline Pilots Association and other unions at a hearing by the House Judiciary Committee's Subcommittee on Commercial and Administrative Law to urge changes in the Bankruptcy Code to eliminate the "discriminatory" treatment.

A representative of USAPA, an independent union which represents pilots at US Airways, said that unlike railroad workers, airline workers' labor contracts are subject to rejection under Section 1113 of the law, if the debtor satisfies certain procedures, even though both groups of workers are covered by the Railway Labor Act. Also, unlike unions covered by the National Labor Relations Act and subject to Section 1113, those representing airline workers do not have the right to strike if their contract is rejected, USAPA said.

"We do not have the same rights under RLA that railroad employees do—and the absence of these rights has created a situation where airline employers may, as a practical matter, gut our wages, work rules, and pensions with impunity," Sullenberger said.

Airline executives "have shown a willingness to file bankruptcy and use their leverage to ravage airline collective bargaining agreements, resulting in lower wages, loss of pensions, and poor working conditions for airline employees," he said.

As a result of his company's two Chapter 11 bankruptcy restructurings, in 2002 and 2004, his pay has been cut 40 percent, while that of his co-pilot on the downed flight was slashed 60 percent, and their pension plans were terminated, he said. In addition, "we are working longer days and more days per month," Sullenberger said.

"It has greatly affected the morale" of US Airways' pilots, he said, adding that even so, employees have kept their focus on safety while on the job, he said.

Since 2000, more than 40 airlines have filed for bankruptcy, including four of the six major national network carriers—US Airways, United Airlines, Delta Air Lines, Continental Airlines, and Northwest Airlines, which has since merged with Delta, according to the Coalition of Airline Pilots Associations. In the US Airways and United Airlines bankruptcies alone, the pensions of a total of 183,852 airline employees were terminated, USAPA said.

At the same time, the chief executive officers at US Airways and United received more than \$52 million in salary, bonuses, and stock upon the carriers' emergence from Chapter 11 bankruptcy, International Association of Machinists.

The International Brotherhood of Teamsters also backed changes in bankruptcy law to treat airline workers' contracts the same as those of railroad workers in Chapter 11 cases. That would require employers to follow the Railway Labor Act's more lengthy negotiating and mediation procedures to obtain voluntary cost-cutting agreements.

"Notwithstanding congressional intent, the experience of the previous decade suggests that the Section 1113 process is not working as intended, at least within the context of airline bankruptcies," Rep. Steve Cohen (D-Tenn.), chairman of the subcommittee,

Cohen said he supported a bill (bill number unavailable) introduced Dec. 16, the Protecting Employees and Retirees in Business Bankruptcies Act, by Judiciary Committee Chairman John Conyers (D-Mich.), which would make "broad changes" to the Bankruptcy Code

to help protect workers in the airline and other industries. Conyers introduced a similar bill in 2007.

An IAM official called for enactment of comprehensive “bankruptcy reform that should apply to all private sector workers covered by collective bargaining agreements.”

Attorney Suggests Modifications. Marshall S. Huebner, a partner at Davis Polk & Wardwell who represented Delta in its bankruptcy case and advised Frontier Airlines during its Chapter 11 restructuring, argued that the proposed changes would stack the process against debtors in favor of unions.

Although Section 1113 needs to be revised, the proposals effectively would give unions the option of forestalling any cost cuts, increasing the already high 90 percent failure rate of airlines in Chapter 11, Huebner said. Frontier “would not have survived in an even slightly less favorable legal system,” and that would have cost all of its employees their jobs, he said.

Huebner suggested four changes in Section 1113 to “enhance the protections for workers without unduly

risking the survival of their employers,” including amendments to:

- require the bankruptcy court to consider any enhancements to executive compensation or management sacrifices made during the case and for one year prior to a filing;
- place a limit on debtors’ proposed cost cuts of four years following emergence from bankruptcy;
- requiring that unions receive a damage claim in compensation for contract rejections and cost cuts, entitling them to equity in the company after emergence;
- clarification of the law to ensure that before deciding on a motion to reject a contract, a court consider both sides’ final proposals, not just their initial proposals.

Enacted in 1984, Section 1113 requires that for the court to grant a motion to reject, the debtor first must satisfy several standards or processes, including making a “good faith” effort to bargain with the union on a new contract. The union also must negotiate in good faith and cannot reject a debtor’s proposal without “good cause.”

BY LARRY SWISHER