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STATEMENT OF J. TOM WATERS PRESIDENT, LOCAL 3290

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME)

BEFORE
THE

COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON AVIATION

MARCH 22, 2007

STATEMENT OF J. TOM WATERS, PRESIDENT, LOCAL 3290
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME) BEFORE THE COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE SUBCOMMITTEE ON AVIATION
MARCH 22, 2007

INTRODUCTION

Good Morning, Mr. Chairman and members of the Aviation Subcommittee, I am Tom Waters, President of AFSCME Local 3290. AFSCME is a labor organization that represents over 1.4 million workers, predominantly in the public sector. We represent approximately two thousand employees of the Federal Aviation Administration (FAA) who work in a variety of professional positions at the FAA Headquarters in Washington, D.C. I appreciate the opportunity to appear before you this morning.

For the past seven years I have had the honor to serve and represent the attorneys and administrative staff within the FAA's Office of Chief Counsel. Today, I am especially pleased to also represent, in my testimony, the AFSCME members within the other three FAA headquarters locals at the request of their presidents, my colleagues and friends, who are here today.

Similar to what you will be hearing from the representatives of the other unions here today, our story deals with the FAA's conduct in contract negotiations, but rather than repeat the often cited history of personnel reform and related statutes, I want to amplify the cost in human terms of the FAA's labor and employee relations practices under personnel reform. I have seen firsthand how quickly and nearly irreversibly a workforce can become distracted, demoralized, and angry by the belief that its employer has dealt with them in an unjust and high-handed manner. After all, the issues at stake for the employee in the employer/employee relationship are no less than the employee's career, livelihood, and the ability to keep his or her family healthy, safe, and secure.

PAY FOR PERFORMANCE AND UNIONIZATION

The road to our contract dispute began with FAA's goal of pay for performance for employees and I begin my testimony today by emphasizing that the employees within the Office of Chief Counsel, and I believe throughout headquarters, initially had little apprehension about the *concept* of pay for performance, called "core compensation" at the FAA. In fact, I told former Administrator Jane Garvey in 2000 that we would be leading the charge for performance-based pay if we thought management was capable of following employee performance guidelines and giving fair, accurate, and timely appraisals. As background, under the former FAA Performance Management System (PMS), devised pursuant to the Merit System principles and statutes, supervisors often, if not most of the time, failed to give employees timely performance appraisals - if they provided annual appraisals at all. Some employees have had

their managers ask them to back date evaluations to make them look timely. Another example of management's failure to abide by the PMS was an attorney who left the Agency but had not received an evaluation for three years and had to write her own and then insist that her manager sign it so that she could use it in her job application to another agency.

Supervisors also ignored initial and mid-term counseling under the Agency's PMS. Not surprisingly, under FAA's brand of personnel reform, the agency implemented a *pass/fail* system of evaluation instead of a meaningful and substantive evaluation system.

The working conditions at FAA, as well as FAA's failure to be forthright with the employees engendered workforce angst, mistrust, and antipathy and ultimately led employees within the Office of Chief Counsel to unionize with AFSCME. Other headquarters employees followed and formed three more AFSCME locals. The union movement engendered an *esprit de corps* and solidarity that crossed all disciplines and divisions in a way previously unknown.

In general, white collar headquarters employees and lawyers specifically are not the type of workers given to labor organizing. I, along with the other founding members and officers of Local 3290, are generally conservative in our political beliefs and never thought we would be part of a union. As pay for performance spreads across the federal government, I believe it is important to mention to this Subcommittee that our backgrounds as professionals contrasted with our actions as union organizers and led me to the unshakable conclusion that politics doesn't make unions, employers do.

I remain confident that we took the right action in organizing with AFSCME as having an advocate during these particularly difficult times with FAA has been reassuring.

BACKGROUND ON CONTRACT NEGOTIATIONS AND DEMORALIZING DISPUTE

From the summer of 2000 through February 2001, a 25-member negotiating team comprised of members of all FAA/AFSCME headquarters locals negotiated a 75-article contract with a management negotiating team comprised of management representatives from all affected lines of business. Our agreement and practice was that upon resolution of its terms, the chief negotiators of each bargaining team would initial each article signifying completion of and agreement to the article. After this initialing procedure, reopening the article was not allowed. To this day, the numerous procedures, policies and productivity and efficiency gains in the contract stand as a guide to organizational effectiveness. As a noteworthy aside, management representatives acknowledged to us at the bargaining table that the AFSCME negotiating team developed a better performance-based pay system than the Agency. Moreover, productivity gains offset any pay raises.

The four AFSCME locals overwhelmingly ratified the agreement on February 21, 2001 by a vote of approximately 1000 to 30. FAA employees covered by the contract were pleased and relieved. They were delighted in the belief that they had played a role in helping to establish a model workplace. They were reinvigorated by their stake in the FAA's mission and eager to focus on the work of the taxpayers and aviation community. Again, the *esprit de corps* among FAA workers was noteworthy.

However, this elation was short-lived when Administrator Garvey submitted the agreement to the Office of Management and Budget (OMB) for approval and then ultimately refused to sign and execute the contract maintaining that OMB disapproved. You may be aware that OMB approval of an agency's collective bargaining agreement with the bargaining units' exclusive representative is not a requirement under federal labor law, nor did the Union ever acquiesce in OMB review or approval. That action was the genesis for the rock-bottom morale that now exists at FAA. To negotiate a contract, agree to the terms, sign off on the contract and then refuse to implement the contract is untenable.

As a result of this bad-faith bargaining action, on March 20, 2001, AFSCME filed an unfair labor practice charge with the Federal Labor Relations Authority's (FLRA) Regional Office alleging that the FAA's failure to execute the agreement violated sections 7114(b)(5) and 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute. Between Congress, the FLRA, and the United States Court of Appeals for the District of Columbia Circuit, the history of that protracted litigation, which the Union lost, is a matter of substantial record and not repeated here. Worth recounting here, however, is that under the initial litigation, documents surfaced which refuted the Agency's representations with regard to approval authority. One document presented at trial showed that the FAA actually asked OMB to change draft language in a letter in response to a congressional inquiry. OMB's letter had made it abundantly clear that FAA management held the final decision on signing, not OMB, and FAA requested that OMB remove this language for wording that stressed that OMB did not concur, thus bolstering FAA's claim that it was not the agency that backed out but that they were barred from executing the contract due to OMB's disapproval. The Agency's attempt to revise the OMB letter is perhaps as telling as the substance of the revision.

Even if it preferred OMB approval, by refusing to execute the agreement, the FAA shot itself in the foot. Initially, the headquarters workforce was satisfied that it had smoothed the sharp edges of a unilateral FAA pay for performance system in favor a well-planned, bilaterally agreed upon, pay for performance system. Employees were ready and eager to put behind them their fears and concerns about a new pay system and their suspicions about management's intentions. Instead of the agreed upon pay for performance system, however, what the employees have now is a near exact replica of the old General Schedule pay system. Without the pay for performance system that we negotiated and the other terms agreed upon, we are stuck with often pointless performance reviews, no meaningful grievance procedure and litigation as the only recourse for dispute resolution - when third party resolution is what is desired. Instead of a uniform system for determining changes in working conditions, all changes must now be resolved on a piece-meal basis through impact and implementation bargaining.

As I said, for the past seven years, I have had the honor of serving with many dedicated colleagues, including the other AFSCME presidents here today, their predecessors, and my own local's executive board members. Together, we and our members have continued to call for fairness and accountability despite the agency's intransigence and the lack of a contract. Nobody likes to be at odds with their employer, but we are determined to complete our task of delivering a satisfactory contract to our colleagues and members.

AFSCME has tried every means available to resolve this long and protracted contract dispute with the FAA. We requested assistance from Congress and twice had report language inserted in appropriations measures directing the Agency to implement the contract. The FAA ignored the directives. Considering the fact that AFSCME has exhausted all means to resolve this matter and the FAA has used all means to thwart our efforts and those of the other unions who are in the same unfortunate position, it is time for Congress to consider a legislative approach to resolving FAA's failure to live up to its congressionally mandated task of *legitimate* personnel reform. The FY 96 appropriations language that granted the FAA unfettered discretion in personnel reform must be repealed. It has led to massive labor unrest and poor employee morale. Employees need to believe in the integrity of their employer and that they will receive a fair shake when it comes to bargaining with their employer. I urge the Subcommittee to act to eliminate the flawed and unfair bargaining process that currently exists at FAA in order to avoid any further misuse by the agency of its bargaining authority.

I thank you for the opportunity to present this statement, and I would be pleased to answer any questions you may have.