

OSHA AVIATION INDUSTRY WHISTLEBLOWER STAKEHOLDER
MEETING
October 8, 2019
Minutes

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, DC

The OSHA Whistleblower Stakeholder Meeting was called to order by Rob Swick at 1:00 pm on Tuesday, October 8, 2019.

The following members of the public were present:

| NAME | TITLE & ORGANIZATION |
|----------------------|---|
| David Atherton | Program Analyst, Federal Aviation Administration |
| Scott Ayers* | Aviation SMS Manager, Department of Aviation, City of Atlanta |
| Peter Caruso | Vice President, Transport Workers Union (TWU) Local 591 |
| Russ Dittmer | Aircraft Maintenance Executive Board Member, TWU Local 591 |
| Tom Ewing* | Freelance Writer |
| Sheila Frederick* | Assistant General Counsel Labor and Employment Law, United Airlines |
| Scott King | National Safety and Standards Director, Aircraft Mechanics Fraternal Association (AMFA) |
| Brett Levanto* | Vice President of Operations, Aeronautical Repair Station Association |
| Meredith Mellody* | Director, Federal Affairs, The Boeing Company |
| Sam Mintz | Reporter, Politico |
| Bret Oestreich | National Director, AMFA |
| Glenn Olsen | Financial Treasurer, TWU Local 591 |
| C. Edward Rawl | Senior Counsel, Labor, Employment & Benefits Law Group, The Boeing Company |
| Anjali Sachdev* | Whistleblower |
| Gary Schaible | President, TWU Local 591 |
| Lee Seham | Attorney, Seham, Seham, Meltz & Petersen, LLP |
| Allison Squicciarro* | Attorney, Law Offices of Paul A. Lange, LLC |
| Jaime Wamble | Attorney, FordHarrison, LLP |

Note: * denotes attendees who participated via teleconference

The following U.S. Department of Labor (DOL) staff were present:

| NAME | AGENCY | TITLE |
|-------------------|---------------|---|
| Loren Sweatt | OSHA | Principal Deputy Assistant Secretary |
| Anthony Rosa | OSHA | Acting Director, Directorate of Whistleblower Protection Programs (DWPP) |
| Christine Stewart | OSHA | Division Chief, Division of Policy, Planning, and Program Development, DWPP |
| Megan Guenther | SOL-FLS | Counsel for Whistleblower Programs |
| Philippe Blancato | OSHA | Investigative Specialist, DWPP |
| Dale Caldwell | OSHA | Program Analyst, DWPP |
| Andrea Carlson | OSHA | Program Analyst, DWPP |
| Kim Darby | OSHA | Writer-editor, Office of Communications (OOC) |
| Ryan Himes* | OSHA | Assistant Regional Administrator for Whistleblower (ARA), Regions IX and X |
| Anthony Incristi* | OSHA | ARA, Region VI |
| Denise Keller* | OSHA | ARA, Region V |
| Michael Mabee* | OSHA | ARA, Region I |
| Frank Meilinger | OSHA | Director, OOC |
| Mike Oesch* | OSHA | Regional Supervisory Investigator (RSI), Region VII |
| Tiffany Riddick | OSHA | Investigative Specialist, DWPP |
| Antione Robinson* | OSHA | ARA, Region IV |
| Meghan Smith | OSHA | Program Analyst, DWPP |
| Natalie Starks* | OSHA | RSI, Region III |
| Gail Stewart | OSHA | Management Analyst, DWPP |
| Rob Swick | OSHA | Investigative Specialist, DWPP |
| Yasmin Wardlaw | OSHA | Program Analyst, DWPP |
| Teri Wigger* | OSHA | ARA, Region II |
| Cory Wilson* | OSHA | ARA, Region VIII |

Note: * denotes attendees who participated via teleconference

OSHA Speakers

Rob Swick, Moderator

Mr. Swick welcomed people and gave the ground rules for the meeting:

- OSHA will be in a listening mode for this meeting; we will not be answering questions right now, but we may be able to provide responses later, depending on the question.
- Please limit your remarks to a maximum of 10 minutes.
- When discussing a whistleblower case, do not state either the respondent's or complainant's name. Talk generally about your experience without giving case-specific details.

- After all of the participants who signed up to speak have spoken, we will open the floor for additional comments.

OSHA Principal Deputy Assistant Secretary Loren Sweatt

Ms. Sweatt thanked everyone for attending. She noted that this was the fourth in a series of meetings seeking stakeholder input on OSHA's whistleblower program. Further, this program has a big mission – ensuring that employees are protected from retaliation under 23 different whistleblower statutes. Ms. Sweatt emphasized that it is so vitally important that employees feel comfortable bringing issues to the attention of their supervisors and management – and it is truly in everyone's best interest. She reiterated that the focus of the meeting was on whistleblowers covered under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21). AIR21 covers employees of air carriers and their contractors and subcontractors.

She stated that the agency wanted input on three important issues:

1. How can OSHA deliver better whistleblower customer service?
2. What kind of assistance can OSHA provide to help explain the whistleblower laws it enforces?
3. Are there any safety issues in the airline industry that you think the agency needs to be aware of?

She ended by noting that the agency will be listening carefully to the stakeholders.

Anthony Rosa, Acting Director, Directorate of Whistleblower Protection Programs (DWPP)

Mr. Rosa explained that the first three stakeholder meetings in this series focused on trucking and rail, the financial industry, and Section 11(c) of the Occupational Safety and Health Act. He indicated that the agency received a lot of useful feedback at those meetings and hoped to receive more at this meeting as well. Mr. Rosa noted that, to help the public understand the rights protected under AIR21, the agency is seeking stakeholder input to ensure that the relevant community has the knowledge to protect themselves from retaliation. Mr. Rosa also explained that meeting materials would be available at www.regulations.gov and typing "osha-2018-0005" in the search bar. He concluded by stating that the agency looked forward to stakeholder input on how it can improve.

Stakeholder Speakers

Lee Seham, Seham, Seham, Meltz & Petersen, LLP

Mr. Seham stated that he has represented complainants in 50 AIR21 cases against 10 airlines. He has been a labor lawyer for 32 years. He has represented pilots, various flight attendant groups, and mechanic groups. He thanked OSHA for convening this meeting.

Mr. Seham noted that OSHA isn't doing well and appears to be overwhelmed. His firm has handled several cases with two year delays. They advise clients with resources to take the expedited program. Investigators are increasingly pushing it. He noted that many people don't

have the resources to kickout to federal court. They need an OSHA decision to make it feasible. Typically, at the end of a trial, judges say that the decision process will take a year. The process is too slow.

Mr. Seham wanted to impress upon the agency that the aircraft maintenance world has gone through a seismic change. Airlines used to do everything. Now, only a small portion of maintenance is performed in house. Maintenance is outsourced, sometimes overseas. The problem is that, in these countries, to be a good aviation maintenance technician, you need the rule of law. What these people do is about compliance. They are not supposed to have discretion. Everything they do is in accordance with a manual. They are basically lawyers with wrenches. While they try to work in accordance with the manual, they have supervisors who have suffered a degradation of maintenance culture. They assert that technicians are being told to use their own discretion to determine when a situation is safe enough. Mechanics should not use discretion, ever. And yet, they are being told to say something is safe enough. One major airline wasn't doing lightning strike inspections and told mechanics that, if they do not actually see lightening strikes, they can't call for a lightening strike inspection. They're told to call a bird strike an insect impact. Mechanics are being coerced into downgrading issues.

In a recent case, Mr. Seham deposed a supervisor who admitted what the mechanic alleged in his complaint. The mechanic asked his supervisor, "When I see damage, what do you want me to do?" Supervisor admitted that if the mechanic wanted to keep his license, he should report damage. If the mechanic wanted to keep his job, he didn't know what to tell him. The essence of AIR21 is that a person should never have to choose between his license or his job. The manager admitted this statement in depositions, not knowing how bad it was. A supervisor told mechanics, that if they want to save time, they document that they summoned a plane but don't actually do it. The supervisor invited people under her to commit fraud, and she was promoted. She should have been incarcerated.

Maintenance was cost supported by monopoly. Now, it's a cost center. Airlines used to have a huge inventory of parts in their maintenance stations. Now, the parts are supposed to arrive just in time. The problem is that, when they don't have parts readily available, all of the pressure is on the mechanics. The attitude is, why deprive the airline of revenue? The plane is probably fine.

The pre-deregulation attitude of mechanics was that a plane must be perfect. For the new generation, the attitude is, if it flew in, it can fly out. The need for AIR21 and the need for the enforcement of it has never been more important. Mr. Seham deals mostly with unionized mechanics. He knows that it's worse at non-union stations. He has been seeing a change in culture even in union shops. He has been getting some calls from non-union shops.

There is increasing pressure from OSHA investigators because unionized employees can arbitrate first. In one case, the investigator had the case for seven months before telling the complainant that they would defer to the arbitration process. The arbitration process does not cover all adverse actions covered under AIR21. There are some adverse actions, such as threats, that only OSHA and the ALJs can handle.

Scott King, National Safety and Standards Director, AMFA

Mr. King thanked OSHA for listening. He explained that he has been a mechanic for 30 years. Most mechanics want to show up, work, and go home to their kids. What he's noticed is that more and more pressure is continually applied, so it's concerning to see the uptick in putting profits before safety. It's become a corporate norm in the airline.

Customer Service

Mr. King recommended streamlining the online complaint form. Currently, there are a lot of screens. The FAA form is simplified. More mechanics are using it. If possible, he recommended creating a shortcut to the page, such as a webpage like www.air21.gov that takes you to the complaint form.

He also encouraged OSHA regional folks to contact labor organizations and do presentations on AIR21 procedures. His union has worked with OSHA regional personnel in Dallas. Their presentation was very educational.

Mr. King also suggested providing a means of representation to those who cannot afford it. A lot of young mechanics aren't fortunate enough to be a member of a union or have funds to hire an attorney.

In addition, he recommended conducting investigations with greater urgency. In a recent case, a mechanic was off the job for 10 months. He knows there's a due process, but this member had to seek other means of income. It's a hard path to walk down.

Assistance to Better Explain Whistleblower Laws

Mr. King suggested requiring airlines to tell employees about AIR21 and filing complaints. There should be an informational pamphlet that they have to sign for. When employees are on-boarded, they need AIR21 information.

He also recommended requiring airlines to provide current and recurring training on whistleblower protections under AIR21 for employees. This could be accomplished through computer-based training.

Safety Issues in the Airline Industry

In his years in the airline industry, he has seen it all. Over the last several years, a recurring theme is that airlines promote safety but put maintaining an on-time schedule above all concerns. Reducing parts inventory to reduce overhead is cutting their own throat. Mechanics are put in a bad spot. This has been shown in past AIR21 cases. Profits and shareholders are overshadowing safety priorities.

All Airlines must have an FAA-approved Safety Management System. They must note new hazards. There has been a drastic change in the operational environment of several airlines.

They're taking shortcuts and not documenting discrepancies. Mechanics often find discrepancies when they're looking for something else. Each person that observes a failure must report it. Management likes to say we didn't tell you to look at that, we told you to look at something else. Mechanics are under constant pressure to not document.

He has seen an uptick in outsourcing in the last few years. Outsourced mechanics aren't held to the same standard of qualifications of those in the U.S. Mr. King recommended mandatory drug testing. Overseas, a company might have one certified technician overseeing 10 uncertified technicians.

Gary Schaible, President, TWU Local 591

Mr. Schaible thanked OSHA for the opportunity to speak. His union represents nearly 5,000 mechanics.

He noted that it is not comfortable for employees to blow the whistle on their employers. Documentation speaks for itself. He asserted that airlines have made inflammatory comments about whistleblowers. Mechanics are exposed because complaints may be traced back to the individuals who make complaints about aircraft. These dedicated professionals lose money for being brave enough to not let unsafe aircraft into airspace. Emotional pressures build every day after a complaint is filed. Complainants second guess getting involved in the process and most don't recommend the process to others.

Customer Service

Coercive management practices are still taking place on a daily basis while AIR21 investigations are ongoing. Long investigations allow employers keep engaging in these practices. There needs to be an expedited process, but Mr. Schaible stressed that the expedited process should not be used to pressure whistleblowers to accept a negative outcome.

When investigators do not update complainants, it can be demoralizing. The expedited process available in some regions should be available in all.

Local 591 strongly urged the agency against deferring to the arbitration process in AIR21 investigations. Arbitration agreements are common in the airline industry, but the arbitration process is inferior to AIR21.

Assistance to Better Explain Whistleblower Laws

Workers think of OSHA for workplace safety issues but many don't know about OSHA's whistleblower program. Mr. Schaible was encouraged by OSHA's AIR21 wallet cards. The agency needs to capture the same awareness on the whistleblower side that you have with the safety side. He reiterated a previous suggestion that OSHA provide training to employees about whistleblower protections under AIR21. The unions' representatives can transmit information to members. The agency also needs to ensure that employees at airlines without unions also receive the information.

Safety Issues in the Airline Industry

There has been a deterioration in the aircraft maintenance safety culture. Root causes that his organization sees are increases in outsourcing, the reduction of licensed mechanics, and a tremendous increase in management operational pressures since consolidation of the airlines.

Outsourcing is an issue because outside maintenance providers lack skills and experience. Outsourced maintenance results in an inferior product. He has seen largescale fraud committed by a large vendor in China. Mechanics can't read manuals in English. Much of the time, there no AIR21 equivalent protections in countries where work is outsourced.

At the airline he works for, there are nearly 10,000 mechanics. The airline is looking to reduce this number. Most of it is due to outsourcing work and airlines stretching out maintenance checks further and further apart. There is supervisory pressure to not deal with issues. They see it on a daily basis.

Mr. Schaible is greatly concerned that AIR21 is not properly interpreted so that the FAA can take action based on AIR21 violations. He believes that an act of retaliation is a violation in and of itself.

Mr. Swick adjourned the meeting at 1:48 pm.