SEIU
Stronger Together

July 18, 2017

Dear Representative:

On behalf of the 2 million members of the Service Employees International Union (SEIU), I write to oppose H.R. 2997, the "21st Century Aviation Innovation, Reform, and Reauthorization Act" or the "21st Century AIRR Act." While reauthorizing the FAA is critical, the legislation would create a new air traffic control corporation in which the labor laws and rules governing the corporation would be muddied. The bill undermines workers' ability to organize and contains no guarantee of rights under federal law. The corporation would create a dangerous precedent for workers and the federal laws that protect them.

The new private entity would be bound by a combination of both federal sector and private sector labor laws, creating confusion that will likely need costly litigation to give clarity in cases in which these laws will conflict. This strange classification leaves many open questions as to what laws apply to the entity and under what means would they be enforced. For example, the Federal Labor Relations Authority would adjudicate cases as to whether the parties complied with bargaining obligations under 8(d) of the National Labor Relations Act ("NLRA"). That would make little sense and would break with precedent as to what government body adjudicates these issues.

There is further ambiguity as the bill makes clear that the corporation must adhere to the Fair Labor Standards Act ("FLSA") and the Labor Management Reporting and Disclosure Act ("LRMDA"), laws that would normally apply to a private entity, but doesn't mention other federal labor laws such as Title VII of the 1964 Civil Rights Act, the Americans with Disabilities Act ("ADA"), and the Family Medical Leave Act ("FMLA"). Without a clear statement that these laws apply to the corporation, it could require further legal battle to determine if and how these laws are applicable to the corporation. It is also unclear if the Occupational Safety and Health Act ("OSHA"), which protects workers from hazardous situations in the workplace, would apply to the newly formed entity.

There are even more questions surrounding federal laws pertaining to the corporation and the workers. The new corporation will have to set up (and/or bargain) health plans and pension plans for the employees. Yet the law makes no mention as to whether or not these plans would be subject to protections under the Employee Retirement Income and Security Act ("ERISA"). There is also nothing in the law that states whether or not collectively bargained plans would be subject to the Labor Managements Relations Act ("Taft-Hartley"), as is the case with most private entities. The bills also provides no means to protect or guarantee the pay, healthcare, or pensions of future employees, and will also no longer have the underpinnings of federal law. These negotiable topics will be under constant assault from the corporation and will be chipped away over time, undermining the negotiating power of other federal workers in different bargaining units.

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The rules under which employees of the corporation would join a union are unprecedented. The law would require a majority of employees in a bargaining unit to vote in favor of representation rather than a majority of those who participate in the vote. This would mean that every non-voter is counted as a "no" vote. This change to union elections makes no sense, as union elections are modeled after the U.S. election system where the majority of the participating vote wins the election. There is no reason to create an entirely new and unprecedented procedure of voting, especially one that would only target workers and the union they wish to join.

While H.R. 2997 contains language that ostensibly maintains representational lines for bargaining units, it also contains disconcerting language that the corporation could use to "rescind, amend or alter" the status of bargaining units. The intention and power this provision is unclear, and is cause for concern given that this type of language is not found in other labor laws. Since this authority seems to be open-ended, it is unclear what this provision would mean.

Furthermore, provisions protecting workers' wages and pay are weak or non-existent compared to current federal law. Under the legislation as it is currently written, FLSA covered employees will no longer be able to substitute compensatory time for overtime hours worked, many alternative work schedules will not be available, and overtime will be based only on exceeding 40 hours a week. Removing overtime protections for workers serves no purpose. Combined with the lack of other protections in the way this corporation is established, workers will be more susceptible to wage theft with no guarantee of a grievance process as currently required under federal law. These relaxed or non-existent protections undermine workers throughout the federal workforce and establish dangerous precedents compared to current law.

For the reasons outlined in this letter, we urge you to reject H.R. 2997 due to its undermining of workers' right to organize and failure to protect workers. We will add votes on this legislation to our legislative scorecard. If you have any questions, please reach out to John Foti at john.foti@seiu.org or (202)-730-7157.

Sincerely,

John Gray
Legislative Director

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