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November 12, 2010

Jennifer B. Pennington  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

Re: OSC File No. DA-09-3770

Dear Ms. Pennington:

On November 5, 2010, I received your letter dated November 2, 2010 transmitting information relevant to my disclosure to the Office of Special Counsel (OSC). This letter is in response to the report of investigation received from the Honorable Ray LaHood, Secretary of Transportation, Federal Aviation Administration (FAA) Response to Report of Investigation (ROI) I10A000047SINV, and the supplemental report submitted by Department of Transportation (DOT) in response to OSC's request for additional information. Pursuant to 5 U.S.C. § 1213(e)(1), I am commenting on the reports.

Report of Investigation I10A000047SINV is a well-written and accurate report. I would like to add clarification and/or correct some facts:

Page three, third paragraph, second sentence of the ROI should be clarified to state: "When a potential unsafe condition is identified, an engineer must first validate it, determine if the unsafe condition requires immediate action and develop an Airworthiness Directive (AD) Worksheet." The AD Worksheet is what the technical writer uses to prepare the draft AD, as indicated in Airworthiness Directives Manual FAA-IR-M-8040.1B. In the case of Mandatory Continued Airworthiness Information (MCAI) AD, the engineer is still responsible for developing the MCAI AD Worksheet with technical content as described in FAA Order 8040.5.

Page seven, third paragraph, second sentence of the ROI states: "*However, in the years 2005-2008, the percentage of untimely issued NPRM ADs increased dramatically - to 59 percent by 2008.*"

In year 2005, FAA Aircraft Certification Services (AIR) unilaterally imposed a collective bargaining agreement, which in turn removed all bargaining unit employees' flexible work schedules and other working conditions. While management personnel were still allowed to use flexible work schedules and other working conditions, bargaining unit employees were obviously treated different. This drastically reduced morale and the time each individual could spend supporting the agency's mission of promoting aviation safety. Bargaining unit employees were being ordered to take leave for arriving or

departing the office for as little as ten minutes after their start time or ten minutes before stop time instead of making-up time during the pay period. We are today still at the Federal Service Impasses Panel (Case # 10 FSIP 118) trying to get back flexible work schedules that are offered to other DOT employees, even in the Aircraft Certification Services Engineering Division (AIR-100) that is mentioned in the FAA's response to ROI. This may have contributed to the initial timeliness problems for publishing Notice of Proposed Rulemaking (NPRM) ADs in the years 2005-2008.

Management sets the priority of work assignments. Sometimes employees work AD assignments in parallel with other work assignments or multiple AD assignments, so timing standards need to be studied carefully. Management assigned the ADs to various technical writers and engineers, so implying that Rotorcraft Directorate (RD) management did not know or should not have known where the ADs were located in the AD process is not factual. The employees were following orders and priorities of RD management.

In addition to being aware of the increasing AD backlog, FAA management never mandated any overtime to address the backlog. Employees were then left to juggle increases in workload from new processes, such as Quality Management System (QMS) and the transition to a new delegation system (called Organization Designation Authorization), and management pressure to approve changes to aircraft and new aircraft, such as the Eclipse 500. As a matter of fact, RD management mandated and approved 32,000 hours; \$2.0 million (salary, travel, and overtime costs) and hundreds of hours of compensatory time for the Eclipse Aviation type certificate project.

Page nine in the continued paragraph at the top of the ROI states: *"In addition, we were told that technical writers, lacking engineering knowledge, were unable to effectively identify and extract essential information needed to convert foreign ADs into FAA-issued ADs."*

As stated earlier in this letter, the MCAI AD Worksheet is developed by an engineer for technical content. Based on the AD Worksheet, the technical writer will prepare a draft, while consulting with the engineer as necessary. The engineer ensures technical accuracy, and the technical writer ensures compliance with technical writing and legal drafting standards as indicated in FAA Order 8040.5 and Airworthiness Directives Manual FAA-IR-M-8040.1B.

Management signs the AD worksheet as being complete and accurate. It is not the responsibility of the technical writer to "extract" essential information, but just to create a readable document based on what is provided to them. Management must be held accountable for assigning work and determining the mission of the agency. Title 5 United States Code (USC) 7106 specifically states that it is a management right to assign work and determine the mission of the agency. There is nothing in the record that shows the employees were not completing assignments in accordance to the mission of the agency as established by RD management.

FAA Response to OIG Investigation I10A000047SINV is a well written report, but slightly disingenuous regarding changing AD identification numbers, the causes of the AD backlog and corrective actions. I would like to add clarification, correct some facts and recommend better solutions for the taxpayer:

Prior to DOT and FAA receiving the OSC letter, dated October 20, 2009, the employees had stressed on numerous occasions that the AD process was broken, and RD management ignored the employees. As late as February 24, 2010 (*See Exhibit A (email from technical writer about needed changes to AD process)*), the technical writer notified RD management of simple changes that could make the AD process more efficient. This employee and other employees' suggestions were diminished and ignored. No legitimate plan to correct the AD backlog was implemented prior to October 20, 2009. I was shocked when I received an email on September 17, 2009 from upper management stating, "Overall, the team concluded that the AD process works well and maintains safety. While fundamental changes are not needed, technical collaboration within FAA and between the FAA and industry could be improved." *See Exhibit B at 1 (email from upper management)*.

The employees and I knew the AD process was fundamentally broken, but some employees were not taken seriously while others were afraid to challenge the status quo. There should be an investigation of the alleged AD safety review conducted by upper management because it is typical for management to perform these pseudo reviews and/or special projects to receive awards, bonuses and/or pay increases. This is a drastic unrepairable flaw in the pay for performance rules. *See Exhibit B at 1 (email from upper management)*.

RD management has been perceived as retaliating and blacklisting employees that file complaints, advocate needed change and/or disclose violations of law, rule or regulation, gross mismanagement, and a substantial and specific danger to public safety. *See Exhibit C at 1-4 (workgroup survey)*. I am nervous that the employees and I will be the subject of more retaliation by RD management.

Even though the FAA Administrator has expressed that "customer" is always a reference to the "flying public", our performance plans, performance appraisals and/or Outcomes and Expectations are still outlined with external and internal customer initiative expectations. *See Exhibit B at 1; See Exhibit D at 1-6 (outcomes and expectations)*. Our performance plans are vague and ambiguous, so the employees have performed in a manner that is promoted by their management's expectations. RD management does not promote safety as our primary goal. RD management rarely offered the employees overtime and/or compensatory time to work on the AD backlog. The employees currently receive Superior Contribution Increases (SCIs), pay increases, based on requirements that contain nothing specifically related to processing an AD. For example, the four SCI criteria are:

1. Collaboration: The extent to which an employee's work with others contributes to the productivity and success of the organization.

2. Customer Service: The extent to which the employee provides services and products to meet the needs of internal and/or external customers and stakeholders in an accurate, timely, consistent, and professional manner.
3. Impact on Organizational Success: The extent to which the employee demonstrates success in setting priorities and accomplishing work that directly impacts the ability of the organization to meet its performance objectives and the delivery of high-quality products/services.
4. Management Leadership (managers only): The extent to which an AVS manager creates a positive work environment by demonstrating a commitment to the values of diversity and the model work environment...

These vague and non-specific criteria create much confusion regarding the priority of work assignments. Employees are afraid to upset mostly external customers when processing ADs because it could negatively impact their performance appraisal and their chances of receiving an SCI. There is still confusion about who our customer is even after the FAA Administrator has declared our only customer is the flying public, because RD management and probably even the entire FAA Aircraft Certification Service (AIR) management staff has not adhered to the FAA Administrator's leadership. *See Exhibit B at 1 (email from upper management); See Exhibit D at 4-6 (outcomes and expectations).* This SCI pay for performance program was also unilaterally imposed on bargaining unit employees in year 2005 with the collective bargaining agreement. DOT should follow the lead of the Department of Defense, and scrap the entire pay for performance program.

The AD process has had problems for years, but management has not had the energy to address the problems. *See Exhibit E (email from management).* RD management looked at the technical writer-editors (W/Es) that were all females at this time as people who "bust rocks" as stated in the documentation. *See Exhibit E (email from management).* The employees are not criminals that "bust rocks." The employees are well respected professionals that enjoy being public servants. At times, I think RD management believes they are running a correctional center instead of a professional office with honorable public servants.

FAA Response to OIG Investigation page 3 of 11, second and third paragraph, states: *"...However, once the delays occurred, it was appropriate for the RD to re-evaluate the risk assessment and determine if an IAR was still warranted...When the delays were discovered, RD management and local legal counsel determined that a re-evaluation of the risk assessment was appropriate to determine if the public should be provided the opportunity to comment on the AD."*

A risk assessment does not change merely because time has passed and no Service Difficulty Reports (SDRs) are found in the voluntary Aviation Safety Accident Prevention (ASAP) database. There are no regulatory requirements for operators or manufacturers to input data in the ASAP database. Under-reporting of service difficulty events in ASAP is a known fact within the RD. Since ASAP is a voluntary reporting tool for SDRs, there is no legitimate reason to accept findings of no unsafe condition in ASAP as a good enough reason to re-classify an Immediately Adopted Rule (IAR) AD to an

NPRM AD, ASAP, Risk Based Resource Targeting (RBRT) tool, and Monitor Safety Analyze Data (MSAD) tool are all a waste of government funds. Regulatory requirements should be in place before the government starts spending money on these computer based tools. Any simple cost-analysis will show ASAP, RBRT and MSAD will not provide the taxpayers with a better AD process or more efficient certification process. ASAP, RBRT and MSAD actually waste engineers' limited time and diverts attention away from dealing with regulatory duties. These programs should be ended and the additional funds used to pay down our debt or funds should be diverted to improve operator reporting programs that are already in place.

FAA Response to OIG Investigation, page 4 of 11, first and second paragraphs, state:  
*"...however, we determined the AD identification numbers were changed to preserve AD history after the IARs were reclassified to NPRMs...If a new record is not generated, the database fields for the original AD action are overwritten and its history is lost...The age of an AD is clearly documented in the RD AD database, and is tracked from the date the initial determination of an unsafe condition is made, even if the AD identification number changes."*

Even though changing the AD identification numbers was confusing and misleading to employees in the AD process, the true intention of changing the AD identification numbers was not to deceive the FAA employees. Rather intentionally or accidental, changing the AD identification numbers deceive the flying public because the identification numbers give a perception of the AD's age. There is no need to change the AD identification number, since there is a comment block in the database tracking sheet. *See Exhibit F (tracking sheet from AD database showing comments)*. The comment block has been used in the past to preserve the history of an AD. Also there are numerous NPRM ADs that have their identification number changed without a need for reclassification. There is no legitimate reason to change identification number because there is no reclassification from NPRM AD to NPRM AD and there is a comment block in the database tracking sheet. *See 2006-SW-05-AD (submitted to OSC in initial disclosure)*. These actions by the FAA deceive the public regarding information entering the Federal Register. The flying public should be provided the original identification number of ADs.

FAA Response to OIG Investigation, page 6 of 11 last paragraphs, states: *"...Acting managers took the following specific steps to improve AD timeliness and hold staff accountable:*

- *Issued a PAR to the FAA QMS to require corrective action to the AD process*
- *Instituted bi-weekly reviews of AD status*
- *Performed reviews of other directorate AD tracking systems and made the decision to deploy a new tracking system to better track AD milestones*
- *Deployed the AD Process Action Team to prioritize ADs and reduce AD backlog*
- *Held discussions with the technical writer and engineer cited in the OIG report regarding their failures to perform in processing ADs*
- *Issued disciplinary action against the technical writer cited in the OIG report, in August 2009, in the form of a one-week suspension"*

The items listed in the first three bullets were actually counterproductive to issuing ADs in a timely manner. The employees had already raised concerns about corrective actions needed to the AD process. The RD Standards Staff already had weekly staff meetings each Monday that should have been used to review AD status. RD management did not perform their due diligence to regularly review the tracking system to better track AD milestones. RD management had no problem holding employees accountable, if they thought the subject matter was of importance. RD management deployed the AD Process Action Team after OSC sent its letter dated October 20, 2009 to the Secretary of Transportation.

The technical writer that was suspended had not received an Emergency Airworthiness Directive (EAD) from December 18, 2007 to January 11, 2010 which normally would be completed a lot faster than an NPRM AD. RD management intentionally did not assign the technical writer an EAD, so she could work on NPRM ADs that sometimes vary in the amount of time it takes to write and edit. It is not unusual for an AD on occasion to take longer to process than another AD depending on the complexity, technical content or legal ramifications on the flying public. RD management did not want to give this technical writer more important work assignments.

The technical writer had filed a few grievances against RD management which began a series of retaliatory actions against the employee. The technical writer had a quadriplegic sibling that required her time, and the employee had a few medical issues of her own. Nevertheless, RD management placed the employee on a fixed work schedule and draconian leave restriction requirements. RD management's leave restriction required the employee to request advanced leave for all leave and go to the doctor for all unanticipated leave or be placed on Absent Without Leave (AWOL). *See Exhibit G at 1-2 (leave restriction letter)*. The leave restriction letter begins with false information after you apply simple math to hours listed. The employee was required to visit the doctor for her car problems, and this is not a joke. Even after the employee would produce medical documentation to RD management, they would place the employee on AWOL. After RD management fabricated enough AWOLs, the employee was given a seven-day suspension that had nothing to do with the performance of her AD duties. The employee filed a grievance on the seven-day suspension, and the subsequent hearing transcript and arbitrator's decision show none of the employee's work was deficient and in fact, that the employee was subjected to disparate treatment. *See Exhibit H at 1-10 (arbitrator's decision)*. The arbitrator did find that even though the draconian leave restriction requirements were premised off disparate treatment, the employee was not able to produce medical documentation for one out of five absences, so a small disciplinary measure was warranted. Another technical writer in this same group was subject to similar draconian leave restriction requirements while the employee was taking care of her sick father that later passed away. The technical writer and the engineer mentioned in the FAA's response were performing just as RD management wanted them to perform, but now management uses them to blame for AD failures. RD management assigned the ADs and knew exactly where the ADs were and how long the ADs were assigned to

individual employees. RD management's cozy relationship with industry made their relationship with industry executives more important than processing ADs.

Even after an arbitrator rendered a final binding decision SUSTAINING the technical writer's grievance on the seven-day suspension and documenting disparate treatment of the technical writer, RD management ignored the arbitrator's ruling and continued placing the employee on AWOL with more fabricated AWOL charges using the same tactic that was just ruled on by the arbitrator as being disparate. *See Exhibit I (AWOL notice)*. For RD management to continue the draconian practice of placing the employee on AWOL because the technical writer did not call-in to the office within one-hour of her reporting time was astonishing. If I believed the employee was suspended for causes related to her production of ADs, I would be asking why didn't any managers receive discipline, since FAA Order 8040.1C specifically states, "The authority to issue ADs is granted to the Director, Aircraft Certification Service, or to a Manager of an Aircraft Certification Directorate...Directorate managers may re-delegate authority to issue ADs for their Directorate to the Assistant Directorate Manager, but no further." We all know managers are to be held to a higher standard than subordinate employees.

RD management continued to harass the technical writer with other unfounded discipline that was over-turned by an arbitrator in a previous hearing. After receiving notification of this disclosure, RD management placed the employee on an unwarranted Opportunity to Demonstrate Performance (ODP) plan that was also removed when the employee completed her duties properly as she did in the past. The engineer was not disciplined because the employee was following the priorities as established by RD management. The AD coordinator and the other technical writer both had received SCI pay increases from year 2005 to year 2009 indicating they were performing just as management had wished them to perform.

Throughout this entire series of events, where was the accountability of RD management? RD management was not held accountable for their actions and diversions away from the safety mission.

FAA Response to the OIG Investigation page 10 of 11 implies that the agency is working with the labor organizations. To date, no written notification has been provided to the National Air Traffic Controllers Association (NATCA) AIR labor organization nor has any collaborative request been received. It is my understanding that NATCA-AIR is willing to negotiate changes in working conditions and work collaboratively to create an effective AD system.

FAA Response to OIG Investigation page 11 of 11, item 1, states: "*The AIR Aircraft Engineering Division (AIR-100) will form a group of representatives from the directorates and divisions to define the major steps necessary for tracking the timeliness of ADs and developing an AIR-wide AD process.*"

This is not the best use of government resources. The group of representatives should consist of all the Directorate managers and AIR-1. Having AIR-100 form another group

would leave responsible management too far removed from issues that would produce the most efficient corrective actions. We owe it to the taxpayers to not add layers of bureaucracy when it is not needed. Without any intervention from AIR-100, the AD process has already shown signs of improvement.

We have an AIR-wide AD process that should be followed and ADs placed as our top priority. The AIR-wide AD process should be changed to promote timeliness standards and make better use of templates. Also instead of having more management engaged in group activities, we should have more team leaders and workers that complete actual work assignments.

The problem is not too little management, but too much micro-management and demoralizing of employees. The current management structure in the RD is top heavy with too many managers/supervisors that lose track of the overall mission of the agency and teams. Some managers/supervisors are supervising a limited number of employees or no employees at all which causes the manager/supervisor to normally create work products that are self-serving or do not support the mission of the service. We need a leaner team structure that promotes more team leaders rather than directors and management assistants.

Thank you for allowing me the opportunity to respond. I have enclosed my consent for public release of my written comments. I appreciate your prompt attention to this safety concern that, if corrected, will undoubtedly benefit the flying public.

Respectfully,

/s/ Patrick Massie

Patrick Massie

Aerospace Engineer

Enclosures (10)



# Exhibit A



## Emailing ADs during your TDY

Mary Ann Phillips

Stephen Barbini, Uday Garadi, Eric Haight,  
Sharon Y Miles, Gary B Roach, Jeff Trang,  
Mark Wiley, Ed Cuevas, Clark Davenport,  
Michael Hemann, Matthew Rigsby, George  
Schwab, Scott Tyrrell, Chinh Vuong, Lee  
Roskop, JR Holton, Liz Brandli, John  
Vanhoudt

02/24/2010 11:03 AM

Jim Grigg, Jorge R Castillo, Larry M Kelly  
Patrick R Massie

Just want to give you a "head's up" about a change in the processing of ADs that I draft which are 'urgent' in nature (i.e., Final Rule, Request for Comments--aka Immediately Adopted Rule--as opposed to a Notice of Proposed Rulemaking). Currently, when I return an AD folder to you and it appears you are not in the office, I leave the AD folder on your chair or desk. It occurred to me that in some situations, you might prefer having access to the AD, especially while travelling for extended periods of time.

In an effort to continue to improve the efficiency of our AD process, beginning this week, instead of just leaving the AD folders at your desk to await your return, I will also be sending you an email when it's apparent that you are going to be away from the office for several days (a couple of you HAI'ers should have emails from me!). I will attach any files you may need to address comments/questions on your AD. Normally, this will include scanned copies of the AD with a reviewer's pen & ink changes, as well as related documents you may need for reference (such as an MCAI AD, safety recommendation, etc.). I normally won't include scans of service bulletins since you can now obtain most of them from the manufacturer's websites. Also, since service bulletins are proprietary information, I'm not too comfortable with distributing them. If there appears to be a vital need to include some service information in the scanned files, I will make an exception, of course.

I hope this effort is not construed as one that will impose an extra burden on you while you're away from the office—that is not my intent. Obviously, when travelling to attend meetings or training, your time is already committed. I view this as being more of an **optional convenience**, making those occasional, high-priority ADs available for you to access at your discretion. I will continue leaving the AD folders at your desks in addition to emailing you the scanned documents, since you will still need to initial and date the tracking sheet on the folder. Again, this will only affect the "Immediately Adopted Rule" ADs that I draft—the ADs that are processed in the dark blue folders—and will normally only occur when I believe that you will be away from the office for more than just a couple of days.

If you have any concerns or questions, give me a call at (817) 222-5124. Suggestions are welcome as well!

Thanks,

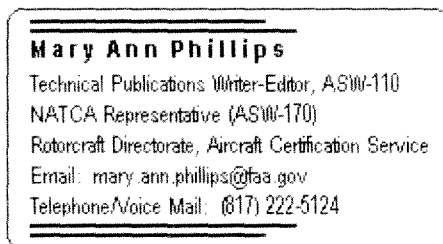


Exhibit B

Peggy Gilligan/AWA/FAA  
AVS-001, Offc. of the  
Associate Administrator

09/17/2009 11:50 AM

To

cc

bcc

Subject Administrator to discuss AVS in meeting with press

Dear Aviation Safety Colleague:

As you're receiving this message, the Administrator is having a press briefing in which issues of interest to AVS will be discussed. I want to make sure that you have this information as quickly as possible. Let me underscore the bedrock of what it is we do: The mission of safety and service for AVS will not change. The moves that are described here are designed solely to maximize the professional skill and dedication that's already located in this organization at every level.

**Audit and Evaluations.** The agency is creating a new office to make sure that when people speak up that their voices are heard. The new Office of Audit and Evaluation will be the focal point for public safety complaints and whistleblower contributions. This office has the green light to go to the Administrator at any time. The goal here is to coordinate external investigations, the Administrator's Hotline, the aviation safety hotline, the public inquiry hotline, the whistleblower protection hotline and the safety issues reporting system. While this office will handle relations with the U.S. Office of Special Counsel, the GAO, and the DOT Inspector General, the safety analysis that may result will remain the purview of AVS. Some AVS employees will be part of the effort to set this up.

**Airworthiness Directives:** We're strengthening the processes used to ensure compliance. We had a team of FAA and industry experts, led by John Hickey and Jim Ballough, look at this, and they found areas where we need to step it up. We issue more than 250 ADs a year. Overall, the team concluded that the AD process works well and maintains safety. While fundamental changes are not needed, technical collaboration within FAA and between the FAA and industry could be improved.

**Customer Relationships.** From now on, "customer" is always a reference to the *flying public*. The Administrator stresses that he doesn't want any ambiguity about this point and frankly, I agree. So we're going to use the *consistency and standardization initiative* to continue our efforts to communicate FAA rules and policies in a standard and more consistent manner. This isn't a question of semantics. Since the word "customer" was causing some confusion about who we serve, we need to make this clarification.

**New Office for AVS.** I'm most excited about the new Accident Investigation and *Prevention* Service which combines the office of Accident Investigation with the Safety Analytical Services. This new office will consolidate resources to better understand emerging risks through data from investigations, historical analysis, and information from the aviation community. Bringing these groups together will make sure we're getting the most use of *all* the data. The office will be headed by Jay Pardee as director and Tony Fazio as

## Exhibit B

deputy director.

I look forward to discussing this in greater detail at our next town hall meeting.

Sincerely,

Peggy

# Exhibit C

## AVS SURVEY WORKGROUP REPORT

### EXECUTIVE SUMMARY

The Rotorcraft Directorate scored below average in Communication and Fear of Retaliation in the 2008 AVS Employee Values Survey<sup>1</sup>. In response to this survey, the DMT chartered a workgroup to document specific examples that resulted in the low scores and to propose solutions to mitigate the causes or perceptions.

### BACKGROUND

The workgroup sent a directorate-wide email and made personal contact with the workforce to solicit examples. During the workgroup's first meeting it became apparent that the communication issue is closely related to fear of retaliation. Communication is impeded when the workforce perceives management will "shoot the messenger." The biggest indication that the perception of retaliation is reality was the hesitation of the workforce to provide examples to the workgroup. Further indication was the workgroup's own reluctance to speak up without assurance that "what is said in this room stays in this room." Another reason cited for not providing information was the feeling that the workgroup's efforts would not have any impact or that the report would "never see the light of day."

### DISCUSSION

The survey indicates that communications within AVS do not flow effectively up the chain of command (from Employee to Manager to Executive). The workgroup attributes this issue as having too many filters in place. Situations were identified where communications were being edited on their way up the management chain. In many instances, the initiator believed that the intended message was not delivered. To mitigate this perception, the initiator should be told why the message changed.

The workgroup found poor communication and fear of retaliation are closely related. One form of retaliation identified was the use of "blacklists". Whether real or perceived, blacklisting is demoralizing. Employees that are not selected for promotion or special assignments might perceive they are on a blacklist. Employees should be told, as honestly as possible, why they are not selected for promotions or special assignments. This allows the individual to grow and become a better employee. It also shows the workforce that management believes "*people are our strength*." Possible fear of retaliation from the workforce leads management to limit the amount of truthful feedback. This is indicative of a lack of trust.

Lack of trust runs both ways. In some cases, management displays a lack of trust by not providing honest feedback or by micromanaging employees. Employees may express their lack of trust in management by withholding complete information or "bad news." The open antagonism between "labor and management" is further evidence of the lack of trust on both sides. In order to affect a better work environment, trust in our fellow employees is necessary.

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<sup>1</sup> Communications within AVS flow effectively up the chain of command: ASW-100 32, AIR 35, AVS 42  
Employees feel comfortable speaking up without fear of retaliation: ASW-100 39, AIR 42, AVS 49

# Exhibit C

Trust building and team building exercises could be beneficial. Treat others like valuable professionals and you will find valuable professionals working with you.

The workforce said they are not comfortable speaking up due to a fear of retaliation. This includes the use of the QMS system, participation in the Union, delivering "bad news", asking questions in meetings, requesting reassignment or transfers, et cetera. The workgroup had to define what retaliation looked like in order to put it in the report.

How Retaliation is Perceived	Blacklist	Lack of Trust
Actions contrary to employee wishes	x	
Being removed from projects.	x	x
Disciplinary actions	x	
Change in treatment	x	x
Not being assigned to projects	x	x
Supervisory notes (EPF and other)	x	
Watching leave activity, arrival/departure times	x	x
Withhold SCIs, OSIs, WGIs, and awards	x	
Unfairly placed on ODP	x	x
Denied leave, overtime, comp time, CWS, AWS	x	x
Outcast, ignored, kept outside the loop of communication	x	x
Given extra work	x	
Given menial work	x	x
Not taken seriously (e.g., rolling of the eyes, failure to act in a timely fashion)		x
Not a favorite or personal friend	x	

## RECOMMENDATIONS

- Distribute this report openly to show transparency – share the results!
- Regular team building sessions (e.g., quarterly); team building exercise at All Hands Meeting (e.g., True Colors, NASA exercise).
- Provide honest and open communication up and down the chain – don't edit the "bad news."
- Treat each other as professionals; respect is earned one day at a time.

# Exhibit C

## FOLLOW-ON ACTIONS

The workgroup's charter limited the scope of this report to the two lowest scores on the survey. However, discussion about the survey within the workgroup also identified other issues as problematic. These issues related to communication can be classified in three main categories: workforce and management; workforce and workforce; and engineers and inspectors. The workgroup recommends additional study of these issues.

## COMMUNICATION ISSUES

Issues	Solutions
Information flow or not received in timely manner.	<ul style="list-style-type: none"> <li>• Identify POC for distribution of certain information to eliminate repetition.</li> <li>• Delivery of, or request for, information in a timely manner.</li> </ul>
Responsible party not identified.	<ul style="list-style-type: none"> <li>• Identify POC or say "contact your supervisor for more information."</li> </ul>
Failure to use best practices within the office.	<ul style="list-style-type: none"> <li>• Ensure that best practices are shared.</li> <li>• Add to business plan to share with other offices.</li> <li>• Clearly identify location of suggestion box.</li> <li>• Managers share the same information.</li> <li>• Weekly basis directorate output of information.</li> <li>• Directorate intranet.</li> </ul>
Cross-Utilization.	<ul style="list-style-type: none"> <li>• Shadow by agreement to increase knowledge and familiarization of other areas.</li> </ul>
Communication lacking between ASIs/ASEs. MIDOs not invited to SRB. ODA Technical Matters – lead position.	<ul style="list-style-type: none"> <li>• Shadow assignments to increase knowledge and familiarization of other areas.</li> <li>• Communication needed for SRB per Order.</li> <li>• OMT /ODA set ground rules; write directive feedback.</li> </ul>
Effective directorate manager feedback, no feedback loop in place.	<ul style="list-style-type: none"> <li>• Multiple paths.</li> <li>• Suggestion box.</li> <li>• Meet with employees (e.g., monthly)</li> <li>• Meet with union representatives.</li> <li>• Publicize "Listening Times." (e.g., open door separate from office)</li> </ul>
Diversity, language barriers, cultural differences.	<ul style="list-style-type: none"> <li>• Change approach to verbal or written, recognize cultural difference – find ways to work through it, use co-worker as buffer if needed.</li> </ul>
Initiating CARS/PARS is viewed as career limiting.	<ul style="list-style-type: none"> <li>• Management needs to say "thank you" as it is part of continuous improvement.</li> </ul>
Mutual respect between management and labor.	<ul style="list-style-type: none"> <li>• Follow notification protocol.</li> <li>• Hold regular meetings between union and management.</li> </ul>

# Exhibit C

<b>Issues</b>	<b>Solutions</b>
Lack of recognition.	<ul style="list-style-type: none"><li>• Give credit where credit is due; ensure entire team is recognized.</li></ul>
Failure to negotiate when required. (e.g., office space and cubicle sizes)	<ul style="list-style-type: none"><li>• Follow the law (negotiate).</li></ul>
"Rock" management on all types of written correspondence (i.e. briefing papers - "I'll know what I want when I see it").	<ul style="list-style-type: none"><li>• Be more specific when requesting written correspondence.</li></ul>
Political pressure.	<ul style="list-style-type: none"><li>• Follow policy and regulations.</li><li>• "Walk the talk".</li></ul>
Shoot the messenger	<ul style="list-style-type: none"><li>• Say "Thank you".</li><li>• Don't shoot the messenger.</li></ul>

# Exhibit D

## Aircraft Certification Service Non-Supervisory Outcomes and Expectations [ACO - Aerospace Engineer: FV-861-I]

This position is established in the Airplane Certification Office (ACO) of the Aircraft Certification Service (AIR). The Aerospace Engineer applies advanced engineering knowledge and experience to his/her responsibility for initial certification and ongoing regulatory administration of a variety of airworthiness programs. As an Aerospace Engineer, directly participates in and is responsible for planning, developing, reviewing, and evaluating certification projects, continuing airworthiness programs, and internal/external certification and organizational processes and issues.

Throughout the expectations in this document, the following definitions should be assumed to be incorporated by reference in determining measurements of performance, such as quantity, quality, and timeliness. Timely--work is usually accomplished to meet established time limits, i.e., mail controls, schedules, etc. Orderly--work flow is usually planned and accomplished in a methodical and systematic manner. Accurately--work is typically accomplished without errors which would adversely affect the technical correctness or intent of the activity. Thoroughly--work normally is accomplished with attention to detail and completeness.

**The following critical ratable outcomes will be performed with limited supervision.**

### I. Individual Work Accomplishments

This Critical Outcome addresses the accomplishment of projects, programs, and other work assignments. The primary measures are quantity, quality, and timeliness, all of which being accomplished maximizing incorporation of the SMS initiatives.

#### a. Certification

1. Reviews and evaluates design, reliability, performance data, results of testing, etc. to find compliance with Airworthiness Standards and Federal Aviation Regulations.
2. Uses time efficiently, records work activities per established office procedures, and continually reviews work assignments to assure proper prioritization of work.
3. Assesses need for tests, reviews test plans, and assures safe and orderly conduct of required tests.
4. Applies sound engineering principles and knowledge of regulations, policy, guidance, and certification procedures. Recommends changes in clear and definitive terms, as necessary.
5. Utilizes a working knowledge of the FAR requirements to identify expectations in developing certification strategies (i.e., PSPs, MOAs, PSCPs, etc.).

\* - *Expectation must be retained by front line manager.*



6. Applies foreign airworthiness requirements, as applicable, in accordance with the relevant bilateral agreement to support foreign validations of U.S. products.

**b. Continued Operational Safety**

1. Evaluates service difficulty information and initiates appropriate action to ensure safety.
2. Prepares complete airworthiness directive proposals and other corrective actions.
3. Evaluates and prepares responses to questions and requests regarding ADs and NTSB and Flight Standards safety recommendations.
4. Evaluates manufacturer's programs for continued airworthiness and provides feedback on necessary improvements.
5. When assigned, plans and conducts audits at aerospace organizations. Provides timely, thorough and professional evaluation reports and related correspondence.
6. Applies established auditing techniques to determine that the product produced complies with the approved type design. \*

**c. System Safety Management**

1. Demonstrates the SMS safety culture (e.g. collaborates with stakeholders, is accountable for actions, trusts in the safety management process and tools, focuses on continuous improvement). \*
2. Utilizes safety management data from a variety of FAA sources to support effective decision-making and acts on precursors to prevent safety problems. \*
3. Promotes a system safety approach to product oversight through integration with other FAA offices and external stakeholders. \*
4. Utilizes risk management and risk based resource targeting techniques to evaluate the technical risk of a design approval holder's design change proposals and production approval holder's quality system. Determines delegation plans with appropriate level of direct ASE involvement. \*
5. Discriminates between technical, procedural, and cultural issues that may have safety-critical implications and those that are not safety-critical. \*
6. Conducts risk-based spot-checks of findings made by the applicant in support of delegated organization or designee evaluation. \*
7. Applies lessons learned and past experience to continually improve safety management processes, as defined by AIR's Quality Management System. \*

8. Shares safety critical data with other FAA organizations and external stakeholders. Collaborates with other FAA Organizations to address safety critical concerns. \*

**d. Managing Projects**

1. As Project Engineer, coordinates technical issues of the project team for the ACO.
2. Within each specialty, develops and coordinates issue papers and special conditions, and prepares progress reports for each certification project.
3. Supports certification projects based on risk based data and identifies resources necessary to complete task and achieve organizational goals.
4. Participates in new TC/STC programs in accordance with AIR policy/guidance, performance measures, and metrics. Evaluates integration of design at the product (e.g., aircraft) level for intended performance and functionality.
5. Evaluates the impact of AIR policy and guidance changes to new/existing projects and programs and takes appropriate action to ensure compliance.
6. Complete all assigned tasks associated with maintaining AVS Quality Management System (QMS) Registration, Safety Management System (SMS) Implementation and other AVS doctrines that may apply.
7. Develops/Implements project plans based on both AIR policy/guidance and customer requirements.
8. Utilizes recognized automated project management systems means to track status and compile project data.

**e. Technical Expertise**

1. Pursues training that will enhance leadership skills, develop team building skills, increase technical expertise, and broaden awareness of the impact of diversity in the workplace.
2. Seeks assignments and details to increase experience and knowledge of diverse technical areas which will enhance the customer full service concept.
3. Makes well informed decisions based on appropriate information and data sources.
4. Considers other strategies in a timely manner when current strategies are not effective.

**f. Delegation Appointment and Oversight**

1. Evaluates prospective designee qualifications for appointment in accordance with established policy and procedures, and prepares appropriate responses.

2. Conducts on-going and thorough oversight of all assigned designees and delegated organizations for adherence to policy, procedures, regulations, etc. Documents deficiencies and takes appropriate action.
3. Conducts a thorough annual review for renewal of assigned DERs, using applicable procedures and guidelines.
4. Utilizes risk based resource targeting data to: effectively delegate work to designees and delegated organizations and: determines the appropriate level of review required for designees and delegated organizations documentation. \*

## II. Teamwork

This Outcome addresses the quality of the employee's participation in the (formal or informal) team process. The primary measures are balance of individual resources devoted to the success of the team versus individual success, active participation in team processes (listening, contributing ideas, critique, "straight talking", etc.), self-development of team skills, and support of team positions and products.

### a. Team Process

1. Actively participates in team activities, offers honest, tactful, and constructive feedback to other team members.
2. Ensures that policies and expectations are clearly and effectively communicated to organizations, team members and other pertinent personnel.
3. Assists team members when there is a workload imbalance, where special skills are needed, or whenever the efficiency or effectiveness of the team is enhanced.
4. Works constructively with others and manages conflict in a tactful manner so that the goals of all stakeholders may be achieved as appropriate.
5. Reviews own work and work of others within the team and provides coaching to the team, as appropriate, to promote standardization.
6. Fully supports the decisions and accomplishments of the team and presents both in a positive manner.
7. Provides information to team members and management on matters concerning assigned duties, projects, and problems to allow early involvement as appropriate.
8. Practices a spirit of "One FAA" in interactions with both internal and external stakeholders.

**b. Modeling Leadership Behavior**

1. Applies innovative approaches to changing environments and initiates timely actions to address potential issues before they occur.
2. Expresses oneself clearly and concisely in writing and in oral presentations. Listens actively and provides effective feedback.
3. Takes initiative to pursue new growth opportunities to enhance personal and technical skills that are of value to the organization.
4. Demonstrates flexibility, a positive attitude and constructively works with others to achieve organizational goals.
5. Coaches new employees through discussions and/or OJT opportunities.
6. Motivates others to achieve their best by using change leadership strategies to accomplish change.
7. Works effectively to ensure an understanding of current and/or revised AIR policy and procedures.
8. Coaches both internal and external customers on the effective application of AIR policies and procedures.
9. Takes initiative to solve problems, honors commitments, and holds self accountable for both technical and non-technical decisions.

**III. Customer Focus**

This Critical Outcome addresses the degree to which an employee uses customer service in routine and non-routine program, project, and other decisions. Primary measures are the degree of respect that internal and external customers display toward the employee, the use of information on customer needs to assist in priority-setting, the exercise of courtesy and consideration in interaction with customers, and the willingness to expend effort to seek mutually satisfactory approaches to solutions to problems, and working relationships.

1. Communicates with FAA organizations, industry, and the public in a tactful, courteous, and supportive manner.
2. Maintains involvement in a variety of projects to expand knowledge, experience, and technical expertise which will facilitate customer service.
3. Responds to internal and external customer requests in a timely and professional manner. Identifies customer needs and requirements to assist in priority determination, solutions to problems, working relationships, and to seek mutually satisfactory approaches to complex issues.

4. Constructively and tactfully deals with conflict that may arise with a customer, displaying a sensitivity and concern for others as appropriate.
5. Provides internal and external customers with an understanding of safety management concepts and processes to support product life cycle management and facilitate FAA safety programs.
6. Establishes strong working relationship with internal and external stakeholders so that there is a free exchange of safety critical information.
7. Advocates AIR's vision and goals to motivate external stakeholders to respond as required to AVS initiatives.

**This performance plan is linked to the FAA Flight Plan, the AVS Business Plan and the AIR Performance Plan as described in the following table:**

This part of your Performance Expectations...	...links with...	...this part of the FAA Flight Plan, AVS Business Plan, and AIR Performance Plan														
		...links with...														
<b>I. Individual Work Accomplishments</b>			...links with...													
Certification				...links with...	Increased Safety, International Leadership											
Continued Operational Safety					...links with...	Increased Safety, International Leadership										
Safety System Management						...links with...	Increased Safety, International Leadership, Organizational Excellence									
Managing Projects							...links with...	Increased Safety, International Leadership, Organizational Excellence								
Technical Expertise								...links with...	Organizational Excellence							
Delegation Appointment and Oversight									...links with...	Increased Safety, International Leadership, Organizational Excellence						
										...links with...						
<b>II. Teamwork</b>											...links with...					
Team Process												...links with...	Increased Safety, Organizational Excellence			
Modeling Leadership Behavior													...links with...	Organizational Excellence		
														...links with...		
<b>III. Customer Focus</b>															...links with...	
																...links with...

Exhibit E

Date: 8/18/1999 9:25:55 PM  
Sender: Larry M Kelly  
To: Mark R Schilling  
cc: Patrick J Long  
Priority: Normal  
Subject: Re:Fwd:MCAI Lessons Learned

---

Mark,  
There were also several blatant self-serving statements, like more W/Es being the solution for the problems. Bologna! More W/Es would do us **NO** good ... although I suppose we would "accept" a position if someone gave us one. (Maybe we could trade a W/E position for a technical AD position downstream). Our existing W/Es can easily overwhelm the system. We need more careful preparation of the ADs by the W/E staff, and we need more technical oversight of the products.

If we want to increase AD production -- given the current system -- give me another Pat Long, not another W/E!

But the Service should be pushing hard -- *at the Executive level* -- to fundamentally change the system for timely issuance of ADs. And the Executive level isn't going to have a clue about the problems OR the solutions, unless we feed them the information. Most people are working like crazy within the current system to produce ADs, but asking for more people to "bust rocks" is just plain goofy as a long term strategy. The number of ADs is on the rise, and the Service has no long term strategy for dealing with that increase. We need innovative suggestions/solutions and a can-do attitude for reengineering the AD system. We need more "we gotta change things!" rather than "oh no, you can't do that!" thinking from ADAPT and anyone else involved in the AD system.

As you can see, I also have no energy around this subject.

Larry

Reply Separator  
Subject: Fwd:MCAI Lessons Learned  
Author: Mark R Schilling  
Date: 8/19/1999 12:50 AM

Pat this is what I sent to the SMT hopefully this doesn't get distributed any further. Mark

Forward Header  
Subject: MCAI Lessons Learned  
Author: Mark R Schilling  
Date: 8/18/1999 9:47 PM

This is a reminder that we were to get with our ADAPT member and discuss the proposed "Lessons Learned Document". I have learned that each of the ADAPT team members are to have their comments in to a central location by COB this Friday August 20.

It is therefore imperative that we get with our members this week. Some of the items I think that should be discussed is the use of an Executive Summary at the beginning of the document that presents some solid recommendations. The document contains some self serving observations that do not belong in the document. There is a great deal of "whining" that the way MCAI's were handled did not meet optimal business practice models (my interpretation). I think that is true, however we were not given the time to do things in the optimal way and putting it in the report in my view is not going to buy anything. Given that, what would make the handling of MCAIs easier?? I do not see that answered in the report and I think should be.

The other thing that is missing from the report are suggestions, no matter how outlandish on how issuance of MCAIs could be made easier. The team should be thinking out of the box on how to make it easier. i.e. why can a foreign regulator do on one page what takes us 7 pages to do. The answer is the Administrative procedures act, but that can be changed if it is brought to the right people's attention. Whether it is do able now or not, I think our people need to at least make the recommendations. I have no energy on this subject as you can tell, anyway please give this your personal attention. Mark

# Exhibit F

## AD TRACKING LOG

<b>DirID</b> 2007-SW-28-AD	<b>AD</b>	<b>Make</b> Erickson	<b>Model</b> S64F
<b>Type of AD</b> NPRM	<b>MCAI</b>	<b>Status</b> open	
<b>Subject</b> Inspect/Replace Certain Rotating Swashplates			
<b>ACO</b> RC	<b>Engineer</b> Kohner	<b>Writer</b> MJB	

STEP	START	END	REVIEWER	REASON
1) <b>Pre-drafting stage</b>	<u>6/19/07</u> Complete Package Received in-112			<u>7/3/07</u> Assigned to Writer
2) <b>Drafting</b>				
<i>TW drafting</i>	7/10/07	7/12/07	Bruner	
<i>Engineer review</i>	7/12/07	8/01/07	Kohner	
<i>Additional review (if required)</i>				
<i>PO review</i>	8/6/07	8/14/07	Cuevas	
3) <b>AD Coord review</b>	11/27/07	11/27/07	Cortez	G
4) <b>SMG Mgr review</b>	11/29/07	12/6/07	Castillo	D,N
5) <b>Legal review</b>	12/7/07	2/11/08	Harold	A,G,D,E,compliance in
<i>Additional review (if required)</i>				
6) <b>Final Coordination</b>				
ASW-112				
AEG	8/15/07	8/16/07	Dryden	
ASW-7				
7) <b>Directorate Mgr</b>				

**Comments**

to TW for drafting (MJB, 7/3/07); to ADC for tracking/coord (MGC, 8/1/07); draft to PO for review (Cuevas, 8/6/07); to ADC for tracking/coord (MGC, 8/14/07); draft in coord (AEG, 8/15/07); draft to ACO for mgr review on 11/6/07; to ADC for tracking/coord/review (MGC, 11/6/07); to TW for changes (MJB, 11/27/07); to ADC for tracking/coord (MGC, 11/28/07); draft in coord (-112MGR, 11/29/07); to ADC for tracking/coord and w/comments (MGC, 12/6/07); to TW to address comments (MJB, 12/6/07); to ADC for tracking/coord (MGC, 12/7/07); draft in coord (-7, 12/7/07); to ADC w/comments and for tracking/coord (MGC, 2/11/08); to TW/egr to address comments (MJB/Kohner, 2/12/08); to egr to address comments (MK, 8/7/08); to MJB for changes (MJB, 11/12/08)



Exhibit G

## Federal Aviation Administration

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### Memorandum

Date: 12/05/2008  
To: [REDACTED] Technical Publications Writer – Editor, ASW-112  
From: Jorge R. Castillo, Manager, ASW-112  
Subject: **Leave Restriction Letter**

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This will confirm today's discussion regarding your excessive use of leave. From October 1, 2008 thru November 30, 2008, you have taken 119:30 hours of sick leave, 248:30 hours of annual leave, and 218:45 hours of Leave Without Pay (LWOP). In almost all instances, these absences occurred without prior approval and/or in connection with your Regular Day Off (RDO) or Federal Holiday. I have also recently discussed my concerns over your leave usage with you during a counseling session held on August 14, 2008. Your frequent absences have disrupted the efficient operation of the office and burdened the other members of the staff with additional work.

Therefore, this is to inform you that my careful review of your leave usage has revealed a pattern which, although approved in the past, is considered excessive and unsatisfactory in view of your overall attendance record to date. Since there is reason to believe that you may be abusing your leave privileges, you are hereby notified that for a period of six months the following restrictions are placed upon your use of leave.

1. All annual, scheduled sick leave (including use for family care) or LWOP must be requested and approved at least **two workdays** in advance by me or my designee in my absence. Requests must be made and approved in Castle. Any planned absence for medical purposes must be supported by a physician's certification of your attendance at the appointment. Leave required for same day use will not be approved except in instances of a bona fide emergency. The existence of an emergency situation will be determined by me or my designee in my absence. You may be required to provide evidence to document the emergency.
2. In cases of emergency, when you are precluded from requesting leave in advance, you must personally contact me at my cell phone 817-691-5224 or my designee in my absence within **one hour** after the start of your workday. My designee can be reached at the office phone 817-222-5112. You must explain why the leave was not requested in advance, the reason for the absence and the type of leave requested. If I determine and inform you that the absence is not of an emergency nature, you will be charged absent without leave (AWOL) until you arrive at work. You may be required to submit documentation to substantiate your emergency. If I am not available at the time you call, you must ask to speak to the acting manager or my designee. It



# Exhibit G

neither of us is available, you must call back until you speak to one of us, or leave a telephone number where you can be reached. Leaving messages with or calling other parties is not an acceptable request for leave.

3. All future requests for unscheduled sick leave (including use for family care) must be substantiated by a medical certificate before the absence will be considered for approval. This is true regardless whether you use annual or sick leave or LWOP. The medical certificate must be an original, signed by a medical authority and include a statement that you were incapacitated for duty and for what specific period of time, the nature of the illness and why it prevented you from reporting to work. This certification must be presented upon your return to work. You will be carried in an AWOL status until receipt of this administratively acceptable medical documentation.

4. You will be required to inform me or my designee no later than *one hour* after the start of your workday as to the condition of your health each day during your absence.

While you are under the terms of this leave restriction, you will not be advanced either sick or annual leave. If you have insufficient accrued leave to your credit, you will be authorized LWOP on those occasions when leave is approved.

Failure to follow any of the above instructions will result in your being charged AWOL. Be advised that AWOL and/or failure to follow the above leave procedures can result in disciplinary action up to and including removal from the Federal service.

If you are experiencing a personal situation or difficulty that is affecting your ability to report to work on time and on a regular basis, you should contact the Employee Assistance Program (EAP) by calling the 24-hour EAP Hotline at 1-800-234-1EAP. This confidential program is designed to assist employees and members of their family particularly when conduct or work performance are adversely impacted.

Please feel free to discuss with me any questions or concerns you may have about any of the above requirements.



Jorge Castillo

Receipt Acknowledgement:



Signature

Date

12/8/2008

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Exhibit H

1

In the Matter of Arbitration

between

Federal Aviation  
Administrative Agency

and

National Air Traffic  
Controllers Union

ASW-09-2009-0916

  
7 day suspension

before

John B. Barnard  
Arbitrator

For the Company

Mr. DeWayne Wicks  
Ms. Loretta Simmons

For the Union

Mr. Scott Odle  
Ms. Gretchen McMullen, Esq.

9:00 a.m., January 15, 2010  
FAA Offices  
Ft. Worth, Texas

1

The Issue

Whether the 7 day suspension given to grievant [REDACTED] was for such cause as will promote the efficiency of the service? If not, what is the appropriate remedy?

Authority

Collective Bargaining Agreement

Article 24 Annual Leave

Section 5 Unless operational conditions do not permit, bargaining unit employees may be authorized the use of all accumulated leave.

Article 25 Sick Leave

Section 2 ...Requests for unanticipated sick leave shall be made as soon as possible, normally within one (1) hour after the employee's scheduled starting time. However, if the degree of illness or injury prevents such notification, the employee will notify the facility as soon as possible...

Section 3 An employee shall not be required to furnish a medical certificate to substantiate a request for sick leave for four (4) days or less...

Section 4 The number of hours of sick leave used shall not, in and of itself, constitute just and sufficient cause for sick leave counseling.

Section 5 In individual cases, where there is just cause to believe an employee may be abusing sick leave, the employee may be given advance written notice, indicating the reason(s) that he/she will be required for a period of time, not to exceed six (6) months, to furnish a medical certificate for each subsequent absence....

Leave Restriction Letter

Dated 12/05/2008

Exhibit H

3

From Manager Jorge Castillo  
to [REDACTED]

...This is to inform you that my careful review of your leave usage has revealed a pattern which, although approved in the past, is considered excessive and unsatisfactory in view of your overall attendance record to date. Since there is reason to believe that you may be abusing your leave privileges, you are hereby notified that for a period of six months, the following restrictions are placed upon your use of leave.

1. All annual, scheduled sick leave (including use for family care) or LWOP must be requested and approved at least two workdays in advance by me or my designee in my absence....Any planned absences for medical purposes must be supported by a physician's certification of your attendance at the appointment. Leave required for the same day use will not be approved except in instances of a bona fide emergency. The existence of an emergency situation will be determined by me or my designee in my absence. You may be required to provide evidence to document the emergency...
4. You will be required to inform me or my designee no later than one hour after the start of your workday as to the condition of your health each day during your absence.

#### Background

The grievant, [REDACTED], was issued a proposed 7 day suspension dated May 7, 2009. The reason for the suspension was Absence Without leave (AWOL). Such letter detailed five specifications. In summary, such specifications state,

1. On December 1, 2008, took unscheduled leave and failed to call within one hour of start time.

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# Exhibit H

2. On December 2, 2008, took unscheduled leave and failed to call within one hour of start time.
3. On December 9, 2008, requested unscheduled sick leave but failed to provide a signed medical certificate.
4. On December 31, 2008, requested unscheduled sick leave but failed to provide a signed medical certificate.
5. On February 10, 2009, requested unscheduled sick leave but failed to provide a signed medical certificate.

A timely grievance was filed, and such is now properly before the arbitrator.

## Agency Position

██████████ Failed to Comply With the Requirements of the Leave Restriction Letter and Agency Requirements Regarding Leave Requests

After reviewing ██████████ leave history, Mr. Castillo counseled her in August, 2008 concerning the expectations regarding the procedures for requesting leave. He also warned her that failure to comply could result in her being placed on a leave restriction letter requiring her to furnish medical documentation for any absence related to illness. On December 8, 2008, ██████████ was given such a letter for which she acknowledged with her signature. The specific requirements were outlined in the letter and clearly stated she was to provide medical certification for absences related to illness that detailed the reason for her absence,

## Exhibit H

committed the offenses as charged in the Notice of Proposed Suspension, and the Agency has failed to prove that the suspension was for such cause as will promote the efficiency of the Agency. The Agency should never have charged [REDACTED] with AWOL for the 5 days in question. The Agency failed to prove that the offense had any nexus to the mission of the Agency or the grievant's ability to perform her duties.

It appears that the Agency has predetermined to discipline [REDACTED] even when she was sick with pneumonia. The Agency should have approved her requests for leave and never should have considered such a severe penalty in this case. Accordingly, for the foregoing reasons, the Union requests that the Arbitrator sustain the grievance and order the relief requested by the Union.

### Discussion and Conclusions

As to the first two specifications, such occurred on December 1, 2008 and December 2, 2008. Of specific note is the fact that [REDACTED] leave restriction letter was not in effect until December 5, 2008.

Item 4 in that letter instructs [REDACTED] to inform supervision,

...no later than one hour after the start of your workday as to the condition of your health each day during your absence.

As such, the leave restriction letter was not in effect during those two instances,

## Exhibit H

and the collective bargaining agreement would then be controlling. In this regard, the contract is not as restrictive as the restriction letter. Article 25, Section 2 is specific,

...Requests for anticipated sick leave shall be made as soon as possible, normally within one (1) hour after the employee's scheduled starting time...

The testimony offered at hearing did not substantially address the reasons why

██████████ called when she did, so obviously I must refer to Section 2 which states,

...as soon as possible

As such the, the first two specifications cannot be sustained.

Specification 3 refers to ██████████ not providing a signed medical certificate for an unscheduled sick leave for December 9, 2008.

Castillo testified that ██████████ received the restriction letter on December 8, 2008. According to Castillo, ██████████ gave him a receipt from Care Now for December 7, 2008.

██████████ testified that she had been off for several days prior to December 9<sup>th</sup>, diagnosed as having pneumonia. According to the Union's post hearing brief, ██████████ had pneumonia from December 1<sup>st</sup> through December 9<sup>th</sup>. It appears then that her medical documentation given on December 7<sup>th</sup> covered the period of December 1<sup>st</sup> through the 5<sup>th</sup>. ██████████ reported for work on December 8, 2008, but left early that day due to her illness.

██████████ testimony was unrefuted when she stated that she went home early on

Exhibit H

December 8, 2008, due to the bout with pneumonia, and she then was off on December 9<sup>th</sup>, due to the same illness. As she didn't receive the restriction letter until December 8<sup>th</sup>, the day she left early, it is not unreasonable to conclude that she was still suffering from pneumonia on December 8<sup>th</sup> and 9<sup>th</sup>. As such then, specification 3 is not sustained.

Specification 4 refers to [REDACTED] being absent on December 31, 2008, having requested unscheduled sick leave but failing to provide a signed medical certificate. She requested sick leave that day to assist in the care of her quadriplegic brother.

According to [REDACTED],

Q. Does the care of your brother require you to use leave?

A. Yes, sometimes.

Q. What, if any, medical documentation on your brother's injury has been submitted to the FAA?

A. I submitted a package to the FAA probably the second year, I guess, after his accident because I went on a program called FMLA, which, I believe, allowed me to use up to 12 weeks leave without pay for that year. And I know I was going to be needing it for that first year. And so there are specific documents you have to submit to get into the FMLA program involving medical documentation.

Q. ...did the Agency accept this documentation as adequate?

A. Yes.



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Q. Are you always able to predict and plan when you have to care for your brother?

A. Not always. I am sometimes, but not always, no.

Q. Why not?

A. Well, I'll get a call at midnight or 2:00 in the morning, or, you know, right before I'm leaving for work, whenever, from my sister in law saying I got to go, can you come, and I do go.

(tr pp 150, 1)

As to Specification 4, the Agency did not offer any evidence to refute the fact that [REDACTED] had qualified for FMLA leave regarding her brother. Also, I'm not at all convinced that medical documentation is at all times mandatory when using some FMLA leave time. As such, and based upon what was presented, Specification.

4 cannot be sustained.

Specification 5 refers to [REDACTED] absence on February 10, 2009 due to her car having been damaged on February 9<sup>th</sup>, the day before. In effect, [REDACTED] stated that she felt sore from the car having been damaged, and treated herself at home rather than visiting a physician.

As [REDACTED] was aware of her restriction letter, she should have made necessary assignments to obtain medical documentation for her absence on February 10, 2009. Specification 5 is sustained.

In sum, what is quite clear having heard this case is an employee, [REDACTED]

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██████████ who does not possess a good attendance record, and such record must improve or else future hearings will come about as to her absences. On the other hand, her supervisor arguably should do a more thorough analysis of those absences, and hopefully come to a more reasonable conclusion prior to electing to impose discipline in any one instance.

Exhibit H

Decision

The 7 day suspension given to grievant [REDACTED] was not for such cause as will promote the efficiency of the Service.

As a result, such suspension is to be reduced to a two (2) day suspension, as only Specification 5 was sustained.

She is to be paid any monies due as a result of the lesser suspension.


The Union has demonstrated that the Agency violated law, rule, regulation and the collective bargaining agreement when it suspended her for seven (7) days for five (5) AWOL charges.

The Back Pay Act authorizes me to make whole employees who are the subject of unjustified personnel actions. 5 U.S.C. 5596 and Article 37 of the CBA.

The first four specifications are to be expunged from her records.

I will retain jurisdiction over this matter until all aspects of this decision have been finalized.

May 14, 2010  
Dallas, Texas

  
\_\_\_\_\_  
John B. Barnard, Arbitrator



U.S. Department  
of Transportation  
Federal Aviation  
Administration

Exhibit I

# Memorandum

Subject: INFORMATION: Request For Information

Date: June 3, 2010

From: Acting Manager, Safety Management Group, Rotorcraft  
Standards Staff, ASW-112

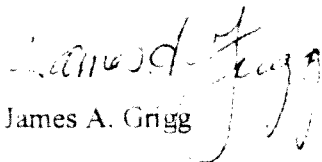
Reply to  
Attn. of:

To: [REDACTED]

You were charged with 2 ¼ hours Absent Without Leave (AWOL) on June 2, 2010 (pay period 12) for failing to request sick leave within one hour of your scheduled starting time in accordance with office policy.

I am requesting that you provide me in writing, within two workdays from receipt of this memorandum, your justification for the AWOL charge detailed above.

Please consider this a Weingarten-type investigation as it may lead to disciplinary or adverse action. For this reason, you are entitled to Union representation and up to two-hours duty time to prepare your response. If you leave your work area to prepare this response and/or to meet with a Union representative, you must have this absence and estimated time approved by me prior to your departure. You are not entitled to leave this building to respond to this requirement. If you have any questions please let me know.

  
James A. Grigg

Response due

NLT COB: 7 June 2010

Signature and date  
indicating receipt: [REDACTED]