

**BEFORE THE**

**U.S. DEPARTMENT OF TRANSPORTATION**

WASHINGTON, DC

## Application of

**NORWEGIAN AIR INTERNATIONAL  
LIMITED**

**for an exemption under 49 U.S.C. § 40109  
and a foreign air carrier permit pursuant to  
49 U.S.C. § 41301 (US-EU Open Skies)**

Docket No. OST-2013-0204

**ANSWER OF THE TRANSPORTATION TRADES DEPARTMENT, AFL-CIO  
TO APPLICATION OF NORWEGIAN AIR INTERNATIONAL LIMITED  
FOR AN EXEMPTION AND FOREIGN AIR CARRIER PERMIT**

On behalf of the Transportation Trades Department, AFL-CIO (TTD) I write to oppose the application of Norwegian Air International Limited (NAI) for an exemption and a foreign air carrier permit. By way of background, TTD consists of 32 affiliated unions including those that represent workers at U.S. airlines that would be in direct competition with NAI for international routes.

TTD supports comments filed by the Air Line Pilots Association (ALPA), and we refer you to the analysis of the NAI business model and legal implications detailed in ALPA's filing. As those comments discuss, NAI is an affiliate of Norway-based Norwegian Air Shuttle (NAS), and was incorporated in Ireland with the express intent of evading Norway's social laws. As a controlled affiliate of a Norway-based company, NAI would not have the opportunity to apply

for a foreign air carrier permit if not for the U.S.-European/Norway/Iceland Air Transport Agreement (ATA), which liberalized air traffic rights between the EU and the U.S.<sup>1</sup>. NAI's business model, which is based on undermining labor standards and driving down labor costs, runs contrary to the provision in the ATA that states that the opportunities created by the Agreement are not intended to undermine labor standards or the labor-related rights and principles contained in the laws of the signatories to that agreement. Furthermore, granting the NAI application would violate the statutory requirement that regulatory decisions made by the U.S. Department of Transportation (DOT), including the granting of air carrier certificates, must promote the public interest and encourage fair wages and working conditions<sup>2</sup>.

Throughout the negotiations leading to the ATA, TTD raised concerns<sup>3</sup> about proposed changes in regulatory structure that allowed any EU airline to operate from any point in the EU to any point in the U.S. This right essentially allows the national airlines of individual European countries to operate as "European" airlines, at least for the purpose of the ATA. Our concerns during negotiations were that airlines would not be subject to a single European labor law, rather the labor-management relations of these airlines would continue to be subject to the national labor laws of particular European countries. We believed that this framework would raise the possibility that EU airlines would seek to compete with one another on the basis of differences in those national labor laws and, in the process, secure an unfair advantage with the U.S. carriers providing transatlantic service.

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<sup>1</sup> The U.S. – European Union Air Transport Agreement was amended in June 2011 to apply to Norway and Iceland as if they were Member States of the European Union.

<sup>2</sup> 49 U.S.C §40101(a)(5)

<sup>3</sup> Attached is a January 11, 2010 letter to Mr. John Byerly and Mr. Paul Gretch

For this reason, we supported the inclusion in the ATA of a labor article such as the previously referenced language stating that the opportunities provided by the ATA are not intended to undermine labor standards or the labor-related rights. With the emergence of the NAS business model that is designed to exploit European aviation and labor laws in order to undermine collective bargaining by the NAS pilots and flight attendants, our concerns during the negotiations in 2010 and our insistence on language protecting labor standards have proved prescient.

NAS is incorporated in and holds an air operators certificate in Norway. However rather than register its 787 aircraft in its home country, NAS has registered them in Ireland and is seeking to obtain an Ireland-issued AOC. For its long haul operations the airline is using pilots who are based in Thailand and employed on individual employment contracts that are governed by the laws of Singapore. The pilot crews are not employed directly by NAS but by a pilot recruitment company that contract, or more accurately “rents,” them to NAS. We believe that NAS intends to use the same or similar model for NAI long haul.

In addition, the airline apparently takes the position that because its aircraft are registered in Ireland it does not need to obtain Norwegian work permits for its Asian-based crew. While the union that represents the non-787 crew is challenging this assertion, the Norway government has indicated that registration of the aircraft in Ireland will postpone the need for Norwegian work permits for the Asia-based pilots and has indicated that obtaining an Irish AOC may take those pilots completely out from under coverage by Norwegian social laws. It is also unclear whether Irish social laws will cover these airline workers, or if they will be required to obtain

Irish work permits. TTD sent a letter<sup>4</sup> to the Irish Minister for Social Protection on October 18, 2013 inquiring whether the Government of Ireland is applying, or intends to apply its social laws to the flight crew members on NAS aircraft. At this time we have yet to receive a response.

It is clear that NAS is using the unique nature of EU aviation laws to effectively shop around for the labor laws and regulations that best suit its bottom line. The airline is using a “Flag of Convenience” strategy at the expense of decent labor standards. In addition to subjecting its own workforce to substandard wages and conditions, the NAS model threatens the U.S. aviation workforce. NAS now serves routes from Scandinavia to New York City and Fort Lauderdale, with plans to serve Los Angeles, Oakland and Orlando in the near future. It also plans to start services to the U.S. from London this summer. By using a Flag of Convenience to dramatically lower labor costs, NAS is undercutting U.S. carriers and their employees that serve those same markets by as much as 50 percent.

In addition to being counter to the labor article included in the ATA, the application is also contrary to the public interest criteria in U.S. law. DOT may issue a permit authorizing a person or entity to engage in foreign air transportation if it finds, among other things, that the transportation provided “will be in the public interest<sup>5</sup>.” When determining if the proposed service is in the public interest, one criterion is the encouragement of “fair wages and working conditions<sup>6</sup>.” Another criterion is “strengthening the competitive position of [U.S.] air carriers to at least ensure equality with foreign air carriers<sup>7</sup>.” The NAS/NAI business model as discussed

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<sup>4</sup> Attached is an October 18, 2013 letter to Joan Burton, the Irish Minister for Social Protection.

<sup>5</sup> 49 U.S.C §40132

<sup>6</sup> 49 U.S.C §40101(a)(5)

<sup>7</sup> 49 U.S.C §40101(a)(15) and (e)(1)



above clearly fails on both criteria. It would discourage, rather than encourage, fair wages and working conditions, and would clearly put U.S. carriers at a competitive disadvantage.

We have watched as another once-great U.S. industry fell victim to the Flag of Convenience strategy that NAS is now seeking to perform. The U.S. maritime industry was not long ago a significant force in the global maritime marketplace with U.S.-flag vessels carrying commercial cargo to ports throughout the world. Now, however, the U.S.-flag fleet is a shell of its former self, with fewer than 100 vessels in operation. Those only sail under a U.S. flag because of government programs that keep them commercially viable due to their strategic importance to our military and national security. The reason is that international shipping corporations are able to register their vessels in the country with the labor laws that best suit their bottom line. By using a Flag of Convenience strategy and choosing the lowest common denominator for wages and labor standards, foreign-flagged vessels are able to operate at a much lower cost, and the U.S. maritime industry has been left on life support after sending thousands of good-paying maritime jobs overseas. Currently, 98 percent of the commercial vessels entering and leaving U.S. ports and harbors are foreign flagged.

We cannot allow a similar fate to befall our aviation industry and its workforce. The NAS/NAI business model is precisely designed to achieve what international shipping corporations achieved with great success over the past several decades. Members of Congress who witnessed the decline of the maritime industry in their own districts have also raised concerns over the NAS/NAI strategy and its vast implications for the U.S. airline industry. At a House Transportation and Infrastructure Subcommittee on Aviation hearing on December 12, 2013, Rep. Peter DeFazio (D-OR) expressed his considerable concern about foreign airlines using a Flag of Convenience strategy to DOT Deputy Secretary for Aviation and International

Affairs Susan Kurland, and asked that the government do whatever it can to prevent this from harming U.S. aviation.

DOT should reject NIA's application on the grounds that its business model violates the labor article in the ATA. It is further in the public interest and consistent with the DOT's statutory requirement to encourage fair wages and working conditions to reject this application.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized flourish at the end.

Edward Wytkind  
President  
Transportation Trades Department, AFL-CIO  
815 16<sup>th</sup> Street, NW  
Washington, DC 20006

202-628-9262  
[edw@ttd.org](mailto:edw@ttd.org)

December 17, 2013

## Attachment 1



*A bold voice for transportation workers*

January 11, 2010

Mr. John Byerly  
Deputy Assistant Secretary of State  
for Transportation Affairs  
U.S. Department of State  
EEB/TRA, Room 3425  
2201 C Street, NW  
Washington, DC 20520

Mr. Paul Gretch  
Director, International Aviation  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Re: Report by Claude Chêne on social issues raised by transatlantic airline companies  
(submitted November 9, 2009)**

Dear Mssrs. Byerly and Gretch:

On behalf of the Transportation Trades Department, AFL-CIO (TTD) I wanted to express concerns with the conclusions reached and the recommendations offered by Mr. Claude Chêne in his report on the labor issues presented by the creation of transatlantic airline companies. In a letter dated December 10, 2009, the Air Line Pilots Association and the European Cockpit Association expressed their specific disappointment with the report. TTD fully concurs with the concerns and issues raised in that letter and wishes to emphasize several specific points.

As the TTD and its member labor organizations have pointed out on several occasions, including at the two EU-U.S. labor forums, the changes in regulatory structure made by the 2008 U.S. – EU air services agreement (ASA) and those proposed by the EU in the ongoing negotiations, raise a number of serious concerns for U.S. airline employees. The ASA allows any EU airline to operate from any point in the EU to any point in the U.S. This right essentially allows the national airlines of individual European countries to operate as “European” airlines, at least for the purpose of the ASA. Rather than be subject to a single European labor law, however, the labor-management relations of these airlines continue to be subject to the national labor laws of particular European countries. This framework thus raises the possibility that EU airlines may seek to compete with one another on the basis of differences in those national labor laws and in the process secure an unfair advantage with the U.S. carriers providing transatlantic service.

### **Transportation Trades Department, AFL-CIO**

815 16th Street NW / 4th Floor / Washington DC 20006

Tel: 202.628.9262 / Fax: 202.628.0391 / [www.ttd.org](http://www.ttd.org)

Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer





Mr. John Byerly  
Mr. Paul Gretch  
January 11, 2010  
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In the ongoing round of negotiations, the EU is proposing to eliminate limitations on ownership of U.S. and EU airlines by investors on the two sides. Our opposition to this proposal is well-known and I will not reiterate our many objections to this approach. I would add that such a proposal, if adopted, would open the door to the creation of holding companies that could own airlines on both sides of Atlantic and use the lack of a common labor law to play the workers of the airlines against one another.

Mr. Chêne acknowledges the concerns that arise out of the ASA but finds that meaningful solutions would be too politically difficult to accomplish. With respect to the challenges posed by the creation of holding companies he does offer a proposed solution: the creation of "labor chambers" that would provide employees an opportunity to be represented at the holding company as well as at the national level. For the ample reasons set out in the ALPA/ECA letter, however, this proposal falls far short of providing an acceptable solution to the myriad labor-management problems that would be spurred by the elimination of the ownership and control rules. Rather, because the labor chambers would apparently be set up under national laws, Mr. Chêne's recommendations could actually exacerbate the problem created by the ASA, i.e., airlines might be able to realize competitive advantages by exploiting differences between those various laws.

We appreciate that Mr. Chêne took the time to meet with TTD and to discuss our concerns about the possible effects of the U.S.-EU air services negotiations on labor-management relations. We recognize that the issues he was asked to examine are complex and might require solutions that would be both novel and politically difficult. Mr. Chêne is to be commended for the considerable efforts he made to identify and attempt to understand many of our key concerns. Unfortunately, we believe his recommendations fall well short of offering solutions that would sufficiently address either the labor issues posed by the ASA or by the proposals being made in the ongoing negotiations.

We urge you to encourage the EU to address the labor concerns that are presented by the ASA. In addition, we urge that you continue to reject the EU proposal to eliminate restrictions on the ownership of U.S. and EU carriers by each other's investors.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward Wytkind", with a stylized, looping flourish at the end.

Edward Wytkind  
President

cc: Susan Kurland, Assistant Secretary for Aviation and International Affairs  
Christa Fornarotto, Deputy Assistant Secretary for Aviation and International Affairs



# TTD MEMBER UNIONS

*The following labor organizations are members of and represented by the TTD:*

*Air Line Pilots Association (ALPA)*  
*Amalgamated Transit Union (ATU)*  
*American Federation of Government Employees (AFGE)*  
*American Federation of State, County and Municipal Employees (AFSCME)*  
*American Federation of Teachers (AFT)*  
*Association of Flight Attendants-CWA (AFA-CWA)*  
*American Train Dispatchers Association (ATDA)*  
*Brotherhood of Railroad Signalmen (BRS)*  
*Communications Workers of America (CWA)*  
*International Association of Fire Fighters (IAFF)*  
*International Association of Machinists and Aerospace Workers (IAM)*  
*International Brotherhood of Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers (IBB)*  
*International Brotherhood of Electrical Workers (IBEW)*  
*International Longshoremen's Association (ILA)*  
*International Organization of Masters, Mates & Pilots, ILA (MM&P)*  
*International Union of Operating Engineers (IUOE)*  
*Laborers' International Union of North America (LIUNA)*  
*Marine Engineers' Beneficial Association (MEBA)*  
*National Air Traffic Controllers Association (NATCA)*  
*National Association of Letter Carriers (NALC)*  
*National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)*  
*National Federation of Public and Private Employees (NFOPAPE)*  
*Office and Professional Employees International Union (OPEIU)*  
*Professional Aviation Safety Specialists (PASS)*  
*Sailors' Union of the Pacific (SUP)*  
*Sheet Metal, Air, Rail and Transportation Workers (SMART)*  
*Transportation Communications Union/ IAM (TCU)*  
*Transport Workers Union of America (TWU)*  
*UNITE HERE!*  
*United Mine Workers of America (UMWA)*  
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service  
Workers International Union (USW)*  
*United Transportation Union (SMART)*

## Attachment 2

October 18, 2013



*A bold voice for transportation workers*

Joan Burton T.D.  
Minister for Social Protection  
Dáil Éireann  
Dublin 2

Dear Ms. Burton:

This is to ask for information on whether the Government of Ireland is applying, or intends to apply, its social laws to the pilots and flight attendants who work on board the Irish-registered aircraft that are being used by Norwegian Air Shuttle (NAS) in the international air transportation services described below.

NAS is an airline that is incorporated in Norway and holds an air operators certificate (AOC) in that country. Through its subsidiary – Norwegian Long Haul, which also holds a Norwegian AOC – it operates a fleet of Boeing 787 aircraft. NAS already serves New York City and Fort Lauderdale in the United States with these aircraft and has announced plans to serve Los Angeles, Oakland and Orlando in the near future.

NAS has registered its 787 aircraft in Ireland. There are also news reports that NAS may seek to obtain an Ireland-issued AOC. We also understand that the airline is using pilots who will be based in Thailand and employed on individual employment contracts that are governed by the law of Singapore to crew the 787s. They will not be employed directly by NAS but by a recruitment company that will then contract (“rent”) them to NAS. We understand that a similar arrangement will apply to the flight attendants who will work on the 787s.

The NAS business model is unique and seems designed to undermine effective collective bargaining by the NAS pilots and flight attendants. Indeed, it appears that the express purpose of the model is to evade the application of Norway’s labor laws. For example, the airline has said that because its aircraft are registered in Ireland that it does not need to obtain Norwegian work permits for its Asian-based crew.

We understand that the union that represents the non-787 pilots is challenging NAS’s contention that Norway labor laws do not apply to 787 flight crew. We understand, however, that the Norway government has indicated that registration of the aircraft in Ireland will postpone the need for Norwegian work permits for the Asian-based pilots and that obtaining an Irish AOC would take those pilots completely out from under coverage by Norwegian social laws.

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



The Transportation Trades Department, AFL-CIO (TTD),<sup>1</sup> is concerned about the operation of the NAS business model into the United States and about the fragmented nature of the labor laws that apply to the flight crews of EU airlines.

The possibility that EU airlines might make decisions on where to register their aircraft and/or to seek their AOCs based on a perception that one country's laws might provide an advantage to the company in terms of labor relations has significant implications that, at a minimum, must be understood. Accordingly, we would like to know the extent to which Ireland will apply its social laws to the pilots and flight attendants who operate NAS's Irish-registered 787s and, in particular, whether the Irish government will require NAS to obtain Irish work permits for those flight crew, and if so, whether NAS has applied for those permits.

We appreciate your consideration of this request. We also would be pleased to discuss our concerns about the NAS 787 operation in more detail if you believe that would be useful.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized, looping flourish at the end.

Edward Wytkind  
President

cc: Alan Shatter  
Leo Varadkar  
David Begg  
Russell Bailey

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<sup>1</sup> TTD is a trade department of the AFL-CIO and represents 32 affiliated unions that in turn represent workers in all modes of transportation. Specifically, TTD represents the following aviation unions: the Air Line Pilots Association (ALPA), the Association of Flight Attendants, CWA (AFA-CWA), the International Association of Machinist and Aerospace Workers (IAM), and the Transport Workers Union (TWU). A complete list of our affiliates is attached.



## CERTIFICATE OF SERVICE

The undersigned certifies that on December 17, 2013, the Answer of the Transportation Trades Department, AFL-CIO to Application of Norwegian Air International Limited for an Exemption and Foreign Air Carrier Permit was served by electronic mail on the individuals identified below:

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/s/ Larry I. Willis  
Larry I. Willis