

110TH CONGRESS
2D SESSION

S. 3416

To amend section 40122(a) of title 49, United States Code, to improve the dispute resolution process at the Federal Aviation Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

Mr. LAUTENBERG (for himself and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend section 40122(a) of title 49, United States Code, to improve the dispute resolution process at the Federal Aviation Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Aviation Ad-
5 ministration Employee Retention Act”.

6 **SEC. 2. DISPUTE RESOLUTION.**

7 (a) IN GENERAL.—Section 40122(a) of title 49,
8 United States Code, is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively; and

(2) by striking paragraph (2) and inserting the following:

“(2) DISPUTE RESOLUTION.—

“(A) MEDIATION.—If the Administrator does not reach an agreement under paragraph (1) or the provisions referred to in subsection (g)(2)(C) with the exclusive bargaining representative of the employees, the Administrator and the bargaining representative—

“(i) shall use the services of the Federal Mediation and Conciliation Service to attempt to reach such agreement, in accordance with part 1425 of title 29, Code of Federal Regulations; or

“(ii) may, by mutual agreement, adopt alternative procedures for the resolution of disputes or impasses arising in the negotiation of the collective-bargaining agreement.

“(B) BINDING ARBITRATION.—

“(i) ASSISTANCE FROM FEDERAL SERVICE IMPASSES PANEL.—If the services of the Federal Mediation and Conciliation

1 Service under subparagraph (A)(i) do not
 2 lead to an agreement, the Administrator
 3 and the exclusive bargaining representative
 4 of the employees (referred to in this sub-
 5 paragraph as the ‘parties’) shall submit
 6 their issues in controversy to the Federal
 7 Service Impasses Panel, which shall assist
 8 the parties in resolving the impasse by as-
 9 serting jurisdiction and ordering binding
 10 arbitration by a private arbitration board
 11 appointed pursuant to clause (ii).

12 “(ii) APPOINTMENT OF ARBITRATION
 13 BOARD.—

14 “(I) LIST OF ARBITRATORS.—

15 The Executive Director of the Federal
 16 Service Impasses Panel shall provide
 17 for the appointment of 3 members to
 18 the private arbitration board described
 19 in clause (i) by requesting the Direc-
 20 tor of the Federal Mediation and Con-
 21 ciliation Service to prepare a list of
 22 not fewer than 15 names of arbitra-
 23 tors with Federal sector experience
 24 and by providing the list to the par-
 25 ties.

1 “(II) SELECTION OF ARBITRA-
 2 TORS.—Not later than 10 days after
 3 receiving the list described in sub-
 4 clause (I), each party shall select 1
 5 arbitrator from the list. Not later
 6 than 7 days after these 2 arbitrators
 7 are selected by the parties, the arbi-
 8 trators shall select a third arbitrator
 9 from the list.

10 “(III) ALTERNATIVE SELECTION
 11 OF ARBITRATORS.—If either party
 12 fails to select an arbitrator or if the 2
 13 selected arbitrators are unable to
 14 agree on the selection of the third ar-
 15 bitrator within 7 days, the parties
 16 shall make the selection by alternately
 17 striking names off the list until 1 ar-
 18 bitrator remains.

19 “(iii) FRAMING ISSUES IN CON-
 20 TROVERSY.—If the parties do not agree on
 21 the framing of the issues to be submitted
 22 for arbitration, the arbitration board shall
 23 frame the issues.

24 “(iv) HEARINGS.—The arbitration
 25 board shall give the parties a full and fair

1 hearing, including an opportunity for each
2 party to—

3 “(I) present evidence in support
4 of the party’s claims; and

5 “(II) present the case in person,
6 by counsel, or by other representative
7 selected by the party.

8 “(v) DECISIONS.—The arbitration
9 board shall render its decision not later
10 than 90 days after the date on which its
11 final member is appointed. Decisions of the
12 arbitration board shall be conclusive and
13 binding upon the parties.

14 “(vi) COSTS.—The parties shall equal-
15 ly share the costs of the arbitration.

16 “(3) RATIFICATION OF AGREEMENTS.—Upon
17 reaching a voluntary agreement or at the conclusion
18 of the binding arbitration under paragraph (2)(B),
19 the final agreement, except for those matters de-
20 cided by the arbitration board, shall be subject to—

21 “(A) ratification by the exclusive bar-
22 gaining representative of the employees, if so
23 requested by the bargaining representative; and

1 “(B) approval by the head of the agency,
 2 in accordance with the provisions referred to in
 3 subsection (g)(2)(C).

4 “(4) ENFORCEMENT.—

5 “(A) ENFORCEMENT ACTIONS IN UNITED
 6 STATES COURTS.—

7 “(i) JURISDICTION.—Each United
 8 States district court and each United
 9 States court of a place subject to the juris-
 10 diction of the United States shall have ju-
 11 risdiction to adjudicate enforcement ac-
 12 tions brought under this section.

13 “(ii) JUDICIAL DISTRICT.—An en-
 14 forcement action may be brought under
 15 this section in—

16 “(I) any judicial district in the
 17 State in which the violation of this
 18 section is alleged to have been com-
 19 mitted;

20 “(II) the judicial district in which
 21 the Federal Aviation Administration
 22 has its principal office; or

23 “(III) the District of Columbia.

24 “(B) ATTORNEY FEES.—The court may
 25 assess against the Federal Aviation Administra-

1 tion reasonable attorney fees and other litiga-
2 tion costs reasonably incurred in any case
3 under this section in which the complainant has
4 substantially prevailed.”.

5 (b) EFFECT OF CHANGES; NEGOTIATIONS.—Any
6 changes to the personnel management system imple-
7 mented by the Administrator of the Federal Aviation Ad-
8 ministration on or after July 10, 2005, under section
9 40122(a) of title 49, United States Code (as in effect on
10 the day before the date of the enactment of this Act), with-
11 out the agreement of the exclusive bargaining representa-
12 tive of the employees of the Federal Aviation Administra-
13 tion certified under section 7111 of title 5, United States
14 Code, shall be null and void. The Administrator and the
15 bargaining representative shall resume negotiations
16 promptly, and, subject to subsection (d), the last mutual
17 agreement before the implementation of such changes
18 shall be in effect until a new contract is adopted by the
19 Administrator and the bargaining representative.

20 (c) ARBITRATION.—If a new agreement is not
21 reached 45 days after the date on which negotiations re-
22 sume under subsection (b), the Administrator and the bar-
23 gaining representative shall submit their issues in con-
24 troversy to the Federal Service Impasses Panel, in accord-
25 ance with section 7119 of title 5, United States Code, for

1 binding arbitration in accordance with paragraphs (2)(B),
2 (3), and (4) of section 40122(a) of title 49, United States
3 Code.

4 (d) INTERIM AGREEMENT.—If the Administrator and
5 the exclusive bargaining representative of the employees
6 subject to the changes referred to in subsection (b) reach
7 a final and binding agreement with respect to such
8 changes before the date of the enactment of this Act,—

9 (1) such agreement shall supersede any changes
10 implemented by the Administrator under section
11 40122(a) of title 49, United States Code (as in ef-
12 fect on the day before such date of enactment) with-
13 out the agreement of the bargaining representative;
14 and

15 (2) subsections (b) and (c) shall not take effect.

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