

Raymond Adams
President
National Air Traffic Controllers Association – Newark Tower
Bldg. 118 Flagpole Road
Newark Liberty Airport
Newark, New Jersey 07114

William E. Reukauf
Associate Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

RE: OSC File No. DI-08-2225

November 11, 2009

Dear Special Counsel Reukauf,

This letter serves as my official comment on the report of investigation sent to you on October 14, 2009 by Secretary of Transportation, Ray LaHood as prepared by the Department of Transportation, Office of the Inspector General and numbered OIG Investigation #I09000005SINV. The report resulted from my disclosure of two significant hazards to aviation safety posed by deficient air traffic procedures at Newark Liberty International Airport, Newark, New Jersey.

I'd like to begin by stating that I don't believe it should be necessary to raise local operational issues to the level of the Office of Special Counsel or the Office of the Inspector General when safety is compromised by a deficient procedure. These issues should be resolved by local FAA management with FAA regional and headquarters support. It is the duty of the Federal Aviation Administration to protect the integrity of the National Airspace System and the passengers and crew who utilize its services daily. Unfortunately, I have found this to not be the case as it relates to entrenched management personnel in the Air Traffic Organization Eastern Region Service Area and the New York Hub. There appears to be a "shoot the messenger" mentality among this group.

My predecessor Mr. Edward Kragh and I both raised the significant safety hazards detailed in the report to former Newark Tower Air Traffic Manager, Edward Masterson beginning in 2005. Mr. Kragh specifically addressed the problems with the runways 22/11 simultaneous approaches when he was facility president. I subsequently addressed the runways 4/29 overhead approach procedure with Mr. Masterson and went as far as to design the basics of an instrument/charted visual procedure in cooperation with Operations Manager, Mr. Robert Lehmann. We also addressed the confusing and potentially dangerous dispersal headings procedure that had been implemented in December 2007

which is not included in the report, but was in my original disclosure¹. Both Mr. Kragh and I felt that our concerns were summarily dismissed by Mr. Masterson and we agreed to disclose these issues to the media and to Members of Congress. I then began a campaign to raise public and congressional awareness of the safety problems at the airport.

On February 7, 2008, a bipartisan letter signed by the entire New Jersey Congressional delegation was sent to then Acting FAA Administrator Robert Sturgell demanding a meeting to discuss the unsafe procedures at Newark Airport². A meeting was convened in Rep. Chris Smith's office on February 15, 2008. The attendees included Members and staff from the New Jersey offices, FAA management officials including Mr. Masterson, Newark Tower union president Ed Kragh and me.

The FAA officials initially objected to the Union's presence at the meeting, but the meeting did go forward after debate between Rep. Smith and the FAA officials. The parties agreed that Mr. Kragh and I would be allowed in as subject matter experts. During the meeting, several pointed questions were asked of the FAA officials by Members, staff, Mr. Kragh and me. These questions were routinely dodged or answered unsatisfactorily in both the February meeting and also at a follow up meeting held in June 2008. At the second meeting, FAA officials flatly rejected the Union's participation and separate meetings were held. This is expressed by Members of Congress in an August 18, 2008 letter to House Transportation and Infrastructure Committee, Aviation Subcommittee Chairman Jerry Costello requesting a hearing on the issues³.

The lack of attention by FAA managers to these repeated disclosures is troubling to me not only as a federal employee, but also as a citizen who routinely flies on commercial aircraft. Even more troubling to me is the way FAA managers operate with impunity. I witnessed this first-hand as I was subjected to reprisals by management at Newark Tower. I was surprised to find that allegations could be made against me and prosecuted without a legitimate investigation into the alleged actions. In the New York Hub of the Air Traffic Organization, the facility managers are the judge, jury and executioner in their respective facilities. In part, this was caused by the Imposed Work Rules⁴ (IWR's) that the FAA implemented in 2006. The IWR's effectively obstructed the grievance process and the Agency was able to prevent grievances from ever reaching arbitration thus eliminating third party review of discipline. Without that check on their power, managers could effectively impose any penalty for any infraction they so chose. I also found that there was no respect for congressional oversight authorities, the Inspector General or individual Members of Congress. It appears to me that FAA managers believed that they were untouchable and Congress was powerless to hold them accountable.

Placed in this situation, I chose to address the reprisals against me through the Office of Special Counsel under the whistleblower protection statute. The process appears to be straightforward, and the law

¹ I agreed to withdraw this from my disclosure when FAA published a charted procedure. The procedure is still problematic and I believe still needs to be addressed.

² Attachment 1 – Letter to Acting FAA Administrator Sturgell

³ Attachment 2 – Letter to Chairman Jerry Costello

⁴ Imposed Work Rules refer to the 2006 NATCA/FAA contract that was never ratified by NATCA membership

appears to be written in a way that should favor protection of whistleblowers, but I found the process to be flawed and the law applied inaccurately.

The Office of Special Counsel accepted my complaint into their Complaint Examining Unit (CEU) and I was advised that an investigation would commence into possible Prohibited Personnel Practices (PPP) by FAA management⁵. At first, the attorney from the CEU was helpful and showed an interest in my claim. I was encouraged by the response as I felt my issues would be addressed and I could finally receive some due process. Within a few months of my claim acceptance, former Special Counsel Scott Bloch came under fire from the Bush Administration and was apparently forced out of his position. As this was happening, I noticed the responsiveness of OSC-CEU attorneys dropping off. My case got shuffled around between multiple attorneys and none of them would return my phone calls or emails.

My case was assigned to investigator Mr. David Hubbard. I attempted to speak with Mr. Hubbard on many occasions and received no response. When I received the OSC-CEU investigation report, I found Mr. Hubbard's investigation severely lacking in depth and that most witnesses I provided to OSC were never interviewed. Mr. Hubbard even neglected to interview me.

I found the same lack of responsiveness on the part of the final CEU attorney assigned to my case, Mr. Darshan Sheth. I called and left many messages for and wrote many emails to Mr. Sheth asking for a return call to discuss my case. I believe I may have spoken with Mr. Sheth one time out of all of my requests. I was stunned when I read his investigative report as it essentially stated that everything management said was credible and that the Agency's actions were justified. He provided only the most cursory explanation of his determinations and the report did not include statements from the witnesses of the alleged events. I found his examination of the facts unbelievable because to even the untrained person, the witness statements and audio tapes of the control position lend at least significant doubt to the Agency's conclusions if not completely impeaching them. Since the Agency has the burden of providing "clear and convincing" evidence a defense of its actions and I have only a "preponderance of the evidence" burden⁶, I believe that my complaint should have been upheld and not dismissed. I am currently addressing this before the Merit Systems Protection Board.

It is my opinion that the Mr. Sheth was looking for a reason to deny my claim and he prematurely dismissed my complaint stating that I did not respond to the decision in the allotted time⁷. His allegation is untrue as I responded by email and certified mail and the email response was clearly provided in the required time⁸. Investigator Vincent and many congressional staffers of the New Jersey Congressional Delegation were also included on that email recipient list.

I have recently learned that the OSC has been subject to decreased budgets over the past few years and there is a shortage of investigators. While I recognize the deficiencies in my investigation may have

⁵ Attachment 3 – Letter from OSC accepting complaint PPP

⁶ 5 CFR 1209.7

⁷ Attachment 4 – Letter from OSC closing file

⁸ Attachment 5 – Email response to Mr. Sheth

been in part caused by the internal leadership issues of not having a permanent Special Counsel and the lack of appropriated funds, I don't believe these issues absolve the OSC of its mandate to enforce the whistleblower protections spelled out in the law. It also appears that political ideology has played a role in the dismissal of not only my case but in cases of other FAA whistleblowers I have been in contact with. I am truly disappointed by the performance and lack of professionalism exhibited by the staff of the CEU.

Conversely, I had an excellent experience with the personnel in the OSC Disclosures Unit. I found the staff there to be responsive, intelligent and eager to understand the arcane complexities of air traffic control. I thank Ms. Pennington and Ms. McMullen for their attention and persistence. I recommend a boost in funding for the OSC so additional investigators and attorneys can be hired to enforce that law effectively. I also implore the President of the United States and the Members of the Senate to appoint and confirm a new Special Counsel who will prioritize the protection of whistleblowers.

I found it common for Agency managers to attempt to obstruct any investigation into the safety issues at Newark Airport. As the report indicates, the Agency did not comply with the DOT Inspector General recommendation to complete a safety study of the runway 22/11 simultaneous arrival procedure⁹. Apparently, FAA Air Traffic Organization managers tried to manipulate the statistics to create the appearance that the procedure was safe and within national norms instead of completing a true safety assessment¹⁰. Also, when the DOT Inspector General's Investigator Erika Vincent travelled to Newark Airport to observe the procedures, I was denied access to the facility and was not allowed to show Mrs. Vincent the procedures. This was an absolute instance of obstruction by the former Air Traffic Manager, Ed Masterson and was typical behavior during his term at Newark. Mr. Masterson also routinely refused to respond to correspondence from Mr. Kragh and me regarding issues of safety, leading us to take our concerns to other entities.

It has come to my attention recently that FAA managers in the New York Hub informed the Secretary of Transportation that a Letter of Agreement (LOA) between NY TRACON and Newark Tower and local procedures were in place regarding the implementation of the CRDA for use during the runway 22/11 operation. The Secretary was apparently under the impression that these procedures were bargained as required with the Union at Newark Airport. As the union president at Newark, I am the only authorized person to bargain procedures at Newark.

I am stating here that I am not aware of any Letter of Agreement between the facilities that specifically addresses the CRDA procedure and I never bargained any local procedures or any change to an LOA between the facilities. I had expressed my concerns to the Acting Air Traffic Manager, Jim Swanson during conversations in his office that we need local procedures and that I am ready and willing to discuss them. Mr. Swanson did not engage in or offer any bargaining on the subject nor did he provide

⁹ OIG Investigation #109000005SINV, Page 3 Paragraph 1 and refers to OIG Investigation AV-2008-050

¹⁰ Memo from David B. Johnson to Robert O. Tarter dated Nov. 24, 2008 referred to as attachment 6 in the report

me the requisite notification in writing that the procedure would be changed¹¹. Additionally, Mr. Swanson sent controllers from Newark Tower over to the TRACON to observe the new CRDA procedure in use without providing the Union the opportunity to attend or appoint a designee as required. In taking these actions, Mr. Swanson effectively subverted the bargaining process and the Union's statutory rights.

During our meeting, I committed to Mr. Jim Bedow of the FAA's Quality Assurance office in Washington, D.C. that when we revamped the procedures, I would negotiate in good faith to accomplish implementation in a timely manner. I ask the Secretary to ensure the Newark Air Traffic Manager accomplishes the required bargaining on all local procedures and the LOA between the facilities.

I remain fearful that entrenched management in the FAA will continue to go after my job no matter how valid my claims have been. The lack of accountability for their actions has emboldened them and does not serve to protect future whistleblowers at Newark or elsewhere in the FAA. I believe FAA management officials hold a grudge against me for my disclosures and I will be targeted for disciplinary action in the future. As the facility union president, I have an obligation to be vociferous about issues that endanger the public or place my controllers in situations where their jobs may be compromised by flawed procedures or management malfeasance. While there are some protections that are afforded to union officials, I don't believe FAA managers will adhere to that law as they have not complied with whistleblower protection laws. I implore the Secretary of Transportation to put "teeth" back into the enforcement of the law and change the culture of retaliation in the Federal Aviation Administration. I am respectfully requesting meetings with the Secretary and congressional oversight committee staffs to inform the parties directly of the FAA personnel I believe are the enablers and actors of this culture.

Since the DOT Inspector General's report has been completed, the FAA has convened a panel to determine the safety of the current runway 29 overhead approach procedure and mitigate the associated safety problems. I was asked to participate along with a union representative from NY TRACON and FAA management officials. Also on the panel are three representatives from Continental Airlines and Jet Link (Continental Express). No other airlines are represented nor are there any representatives from the general aviation community. I find this arrangement to be somewhat inappropriate as the agents from Continental have voting power on the panel and can influence the safety risk analysis process. I believe this is a conflict of interest on the part of FAA as the Agency is a regulatory body and the panel is discussing a known safety problem. I did appreciate the subject matter input of the Continental and Jet Link pilots when discussing the limitations and capabilities of the aircraft flying into Newark, but they should be limited to that input only and not given voting power on the panel's decisions. As of Thursday November 5, 2009 the panel had determined that the referenced runway 29 approach is a high risk operation and has been terminated until such time the risks can be mitigated. The panel is now working on those mitigations and ultimately, a completely new procedure.

I was also disturbed that the Continental Airlines senior executive from Houston, Mr. Les Parsons had read the DOT IG's report before I even got a copy of it. I became aware of this when asked Mr. Parsons

¹¹ 2009 NATCA/FAA Contract Article 7 Section 2 Mid Term Bargaining

if he had read the report and he acknowledged that he had. I had just received the report by mail the day before and was under the impression that it had not been officially released.

I recognize the desire of airline management to ensure the FAA's decisions on procedures at a major hub airport do not significantly hurt the company's operation or financial position, but in situations where the safety of a procedure is in question, the airlines should not influence the Agency's determinations. I ask the Secretary and Members of Congress on the appropriate oversight committees to reduce the influence of the airlines in these safety decisions.

I worked directly with DOT IG Supervisory Investigator Erika Vincent on these disclosures. She was very professional and knowledgeable and did an excellent job of accurately describing the safety problems at Newark Tower. I commend her on her ability to comprehend the intricacies of the air traffic operation. Unfortunately, there was a long delay in the completion of this report and I understand it was because there is a lack of investigative staff at the DOT IG. I respectfully request of Members of Congress that the Office of the Inspector General receive additional funding to hire more investigative staff in order to carry out its mandate effectively.

Overall, I am pleased by the findings of the report as my disclosures have been validated and I am encouraged by the majority of the FAA's recent actions to correct the deficiencies. I am somewhat concerned that the Agency will accept band-aid solutions that do not address the true flaws in these procedures. I hope the Agency follows through and truly fixes the problems.

I am available to provide further information at your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Raymond Adams', written in a cursive style.

Raymond Adams

Congress of the United States
Washington, DC 20515

February 7, 2008

Honorable Robert A. Sturgell
Deputy and Acting Administrator
Federal Aviation Administration
8000 Independence Avenue, SW
Washington, D.C. 20591

Dear Acting Administrator Sturgell:

We are writing to express the concerns we have about certain Federal Aviation Administration (FAA) air traffic procedures now in use at Newark Liberty International Airport. A recent event involving a loss of separation between two arriving aircraft and continuing confusion among pilots adapting to the new dispersal heading procedures compel us to question whether these procedures have been properly implemented.

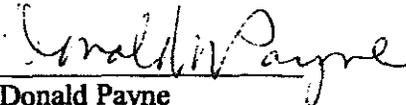
Air traffic controllers from the Newark Tower have advised our offices that there are no published procedures which would establish a safe foundation for key operations. In the case of overflow arrivals to Runway 29, there is no published approach that would ensure aircraft separation in the event of lost communications. We understand that an approach procedure has been developed by air traffic controllers and forwarded by tower management at the Newark Airport to New York Terminal Radar Approach Control where it has since languished.

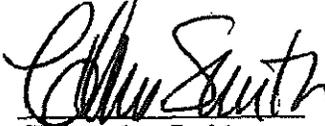
In the case of the Runway 22 dispersal headings, a new Standard Instrument Departure (SID) procedure which contains updated headings has not been published. Forced to use the old SID, controllers are issuing verbal changes at the last minute, often confusing cockpit crews. We understand that this make-do scenario has resulted in several aircraft turning the wrong way upon departure, creating dangerous situations for air travelers.

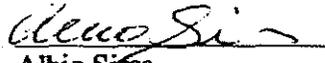
Controllers at Newark have been advised by local FAA management that the publication of such procedures is pending, but they have received no indication that publication will occur anytime soon. In the meantime, daily operations continue at a level of safety clearly less than optimal.

In light of this potentially dangerous situation, we are requesting an immediate meeting to discuss how these crucial issues can be addressed and resolved before any further unsafe incidents occur at Newark Airport. Because of the imminent safety factors involved in this critical situation, we hope a response can be provided within 48 hours. Please contact Kerry McKenney of Representative Donald Payne's Office at (202) 225-3436 or David Kush of Representative Chris Smith's Office at (202-225-3765) to schedule a meeting.

Sincerely,

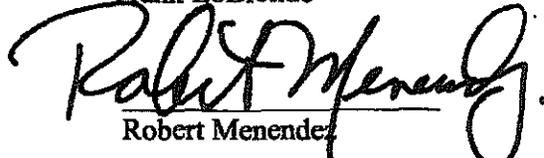

Donald Payne


Christopher Smith

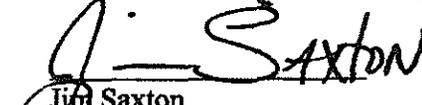

Albio Sires

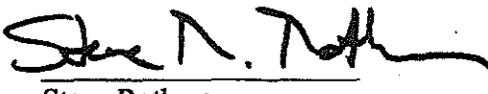

Frank LoBiondo


Frank Lautenberg


Robert Menendez

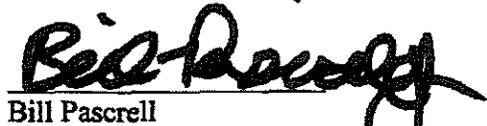

Robert Andrews


Jim Saxton

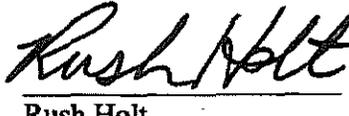

Steve Rothman


Rodney Frelinghuysen


Frank Pallone


Bill Pascrell


Scott Garrett


Rush Holt


Mike Ferguson



Congress of the United States
House of Representatives
Washington, DC 20515

August 18, 2008

Chairman Jerry Costello
House Transportation and Infrastructure Committee
Aviation Subcommittee
2251 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Costello:

We are writing to express our deep concerns relating to potential aviation safety hazards at Newark Liberty International Airport.

We would greatly appreciate your review, committee assessment, and a committee hearing of these critical matters. In many cases, these safety issues, which include some serious procedural flaws, have been recognized and brought to our attention by the air traffic controllers at Newark who have the advantage of many years of daily work experience at the operation. According to the controllers these flawed procedures have caused or contributed toward many losses of separation between aircraft and in at least one recent instance a near collision between two aircraft.

Over the past few years, controllers at Newark Liberty International Airport have raised numerous safety concerns with the Air Traffic Manager at the airport. However, the controllers advised us that when they discussed these issues with the airport manager, their concerns were minimized, dismissed, or ignored. Because of this situational frustration, the controllers decided to publicize safety problem incidents at the airport through the print and broadcast media and by contacting New Jersey Members of Congress.

In February 2008, the controllers formally addressed their concerns with Members of the New Jersey Congressional delegation. The Members responded unanimously in a bipartisan, bicameral manner. All fifteen Members signed a letter to the FAA's Acting Administrator, Bobby Sturgell, requesting a meeting to address the safety problems.

A meeting was scheduled for February 15, 2008, but an FAA caveat prevented air traffic controllers from participating in the Congressional meeting. The FAA representatives cited their concerns about labor issues arising which could constitute bargaining. In a last-minute attempt, Congressman Chris Smith persuaded the FAA representatives to agree to allow the controllers in as subject matter experts, thereby

avoiding labor issue discussions. The meeting, which was held in Congressman Smith's office, was attended by staff from almost every Congressional district in the New Jersey delegation. However, during the meeting, the FAA's representative failed to provide adequate answers to questions from Members and staff. Overall we were not satisfied with the responses to our inquiries, but did offer to hold a follow-up meeting for the FAA to provide us further information.

The follow-up meeting took place on June 12, 2008, again in Congressman Smith's office. This time, the FAA would not move on the issue of having the controllers present. To accommodate their position, the Members and staff present held a meeting at first with the controllers and subsequently with the FAA's representatives. The controllers provided a detailed brief explaining the procedural deficiencies at Newark and questions which the delegation presented to the FAA. During the second meeting the FAA again provided unsatisfactory responses to our questions including some of the issues of concern we expressed during our previous meeting.

Mr. Chairman, because of the need to investigate and assess the issues at Newark Liberty International Airport in a concise manner with the benefits of insights offered by experts such as the ATC, and because of the current lack of cooperation from the Federal Aviation Administration (FAA), we are requesting a hearing on the situation at the airport to be held under the jurisdiction of your committee. We believe a hearing is the best alternative since time is so important in matters of public safety.

Mr. Chairman, we greatly appreciate the attention you have given to our request for a hearing and the need to ensure the flying public's safety. The points of contact on this matter are David Kush in Congressman Smith's office at (202) 225-3765 david.kush@house.mail.gov or Kerry McKenney in Congressman Payne's office (202) 225-3436 kerry.mckenney@house.mail.gov.

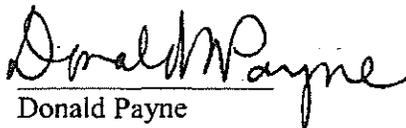


Chris Smith
Member of Congress

Sincerely,



Albio Sires
Member of Congress



Donald Payne
Member of Congress



Frank Lofredo
Member of Congress



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

June 26, 2008

Mr. Raymond Adams
297-2 Spring Street
Red Bank, NJ 07701

Re: OSC File No. MA-08-2149

Dear Mr. Adams:

This is in response to your complaint against officials of the Federal Aviation Administration. You allege that management officials have engaged in actions that constitute reprisal for whistleblowing and reprisal for contacting Congress. As a result of our review of the information presented, we have determined that further investigation of your complaint is warranted as possible violations of 5 U.S.C. §§ 2302(b)(8) and 2302(b)(12). A Special Counsel staff attorney or investigator will contact you shortly to continue this inquiry. If you have any questions concerning the investigation, please contact our Investigation and Prosecution Division at (202) 254-3600.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maria Davis". The signature is written in black ink and is positioned above the typed name and title.

Maria Davis
Attorney
Complaints Examining Unit

ATTACHMENT 3 pg 1-1



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

JUN 23 2009

Mr. Raymond Adams
297-2 Spring Street
Red Bank, NJ 07701

Re: OSC File No. MA-08-2149

Dear Mr. Adams:

On June 10, 2009, the Office of Special Counsel (OSC) sent you a preliminary determination letter which set forth our proposed factual and legal determinations. You were notified that you had thirteen days to respond to this letter. Because we have not received any comments from you concerning that letter, we are closing the file for the reasons set forth in our preliminary determination letter.

In addition, we are also sending to you a separate letter discussing rights that you may have to seek corrective action from the Merit Systems Protection Board (the Board). Because you alleged reprisal for whistleblowing under 5 U.S.C. § 2302(b)(8), you may have a right to seek corrective action from the Board under the provisions of 5 U.S.C. sections 1214(a)(3) and 1221. A request for corrective action may be filed with the Board within sixty-five (65) days after the date of this letter. The Board's regulations concerning rights to file a corrective action case with the Board can be found at 5 C.F.R. Parts 1201-1206 and 1209.

Please note that this letter should not be construed as an adjudication of any matter you have pending or plan to file under any administrative appeals procedure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Darshan Sheth".

Darshan Sheth
Attorney
Investigation and Prosecution Division
Washington Field Office

ATTACHMENT 4 pg 1-1

Raymond Adams

From: Raymond Adams [rayadams@yahoo.com]
Sent: Tuesday, June 23, 2009 2:04 PM
To: dsheth@osc.gov
Cc: 'rayadams@yahoo.com'; 'Garten, David (Lautenberg)'; mwilson@natcad.org; nearvp@natca.net; eddiekragh@comcast.net; erika.vincent@oig.dot.gov; jpennington@osc.gov; hal_connolly@menendez.senate.gov; hannah.brown@mail.house.gov; 'Kush, David'; kerry.mckenney@mail.house.gov; geoffreyg@mail.house.gov; andrea.burgess@mail.house.gov; ben.rich@mail.house.gov; marc.cevasco@mail.house.gov; tuley.wright@mail.house.gov
Subject: Comments in response to your case closure letter dated June 10, 2009 Case MA-08-2149
Attachments: Response OSC denial letter June 23, 2009.docx

Raymond Adams
297-2 Spring Street
Red Bank, New Jersey 07701
201-362-9305

Darshan Sheth
Attorney
U.S. Office of Special Counsel
1730 M Street N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

Via E-mail dsheth@osc.gov and Certified Mail

June 23, 2009

Mr. Sheth,

I received your letter dated June 10, 2009 regarding the closure of OSC File No. MA-08-2149 on June 15th, 2009. I believe you did not properly investigate my claim as required under law and the file should remain open in order for your agency to cure the flaws in the investigation and decision you have rendered. Your acceptance of the Federal Aviation Administration's claims against me at face value without considering the considerable evidence in my favor is a denial of due process and compromises the integrity of your investigation.

On many occasions I attempted to contact you and the assigned investigator David Hubbard via phone and e-mail to present you with evidence and testimony regarding the reprisals and claims against me. Each time, I was unable to reach you and you and Mr. Hubbard both refused to return my calls or correspondence. I even reached out to Ms. Jennifer Pennington of the disclosure division and asked her to relay a message to you. She agreed and advised me that you should return my calls. You did not.

I was never interviewed by Mr. Hubbard regarding any of my claims. I don't believe you can rule on the validity of evidence without evaluating the arguments from both sides of the dispute. Your office is required to apply the standard of "clear and convincing evidence" in evaluating whether an agency would have acted similarly were it not for the protected whistle blowing, whereas only a "preponderance of the evidence" is necessary to validate a reprisal claim. I do not believe your arguments in favor of the agency meet the higher standard. I also believe your flawed investigation compromises your ability to evaluate the evidence. The investigation must remain open and accomplished in a professional manner that complies fully with the law and accepted rules of evidence.

As for the denial of my Worker's Compensation claim, I actually succeeded in my challenge to the agency's denial and was provided full benefit under law. This again invalidates your investigation as I believe you did not consider this fact. The CA-7 form checked "LWOP" that you are using to support your argument was only noted in that manner because I was already placed on Leave Without Pay by management. I did not request LWOP nor would

it provide me any benefit to do so. Also, the CA-7 form is submitted after the CA-1 Traumatic Injury claim that initiates the process. In this case, the CA-7 is irrelevant in the determination of the intent and actions of the agency. The true issue here is that the agency had placed me on paid administrative leave and then rescinded that pay in retaliation for my filing for worker's compensation. My employment status at the time was unequivocally "administrative leave" and that shouldn't change with the denial of compensation by the Department of Labor. Management undeniably took that action to illegally deprive me of pay and benefits. The Agency also made false claims against me in controverting my claim. I was successful in defeating the Agency because the hearing examiner truly evaluated the evidence instead of taking the Agency's claims as fact. In the interest of justice and professionalism, you should do the same.

The reprimand issued to me in February 2008 was the beginning of the reprisals against me. You state that the Agency showed convincing evidence that I did not follow the supervisor's instructions and used profane language. I do not deny using profanity, but you should be aware that profanity is commonplace in the control tower environment. In fact, if you had interviewed witnesses other than management, you would have learned that supervisors also routinely use profanities in the tower cab. Use of profanity has never resulted in disciplinary action in the past.

Also, it is routine to engage in "extraneous" conversation with pilots regarding clearances and other instructions whenever there is confusion about what a pilot or controller is required to do to operate safely in the airspace system. If I did not clarify the instructions with the pilots I would be derelict in my duties as an air traffic controller. Additionally, if I had done exactly as the supervisor said, I would have probably caused an accident and the possible death of the passengers. The supervisor does not have direct knowledge of what is happening with the aircraft under my control and as such if his alleged order was executed explicitly it would compromise the safety of the operation. As you indicate you have read the transcript of the communications, you should know that I did issue each and every dispersal heading clearance in accordance with applicable rules. You also need to know that aircraft continued to make wrong turns while using that procedure for months after my disclosures. In fact, the Airline Pilot's Association (ALPA) President Capt. John Prater defended my actions.

Your response regarding the proposed thirty-day suspension once again indicates to me that you did not evaluate the full body of evidence available to you. I have included the text of my letter of response to the Agency regarding the proposed discipline.

The letter reads:

"This letter is a response to your Notice of Proposed Suspension, dated December 8, 2008, received by Ray Adams on December 9, 2008. The specifications that you have listed are filled with falsehoods and conclusions that belie the testimony provided to you by the employees that you interviewed. You also failed to interview at least one employee, Edward Kragh, who told Operations Manager Robert Lehmann that he had spoken with FLM Clifton Rushing on the night of the incident.

*You allege under **Reason 1** that Mr. Adams failed to comply with a specific instruction from FLM Clifton Rushing to taxi a Learjet across a runway in order for a Continental to Chicago (ORD) to depart first. This allegation contradicts every bit of testimony from every witness that was present in the control tower. The fact is that Mr. Adams never received this specific instruction, and not one person interviewed said that they heard Mr. Rushing give this instruction to Mr. Adams.*

Mr. Adams was extremely busy working a difficult final, and he was focused primarily on arrival speed control and runway safety. The traffic count for that shift shows that this was the busiest arrival push of the day.

According to Newark Tower standard operating procedure, it is not the Local Controller's job to set the departure sequence, rather it is the Ground Controller's. In every typical situation involving a release of an aircraft that has been ground stopped, that coordination is accomplished between Ground Control, the Cab Coordinator, and the Supervisor, and this case was no different. All of the discussion regarding the release of the Continental to ORD was done without the involvement of Mr. Adams, and his awareness of the specific location of the aircraft began when the Continental's strip was placed in the bottom of the departure bay with a "Z" written in red marker, as if it was number one to depart from the full length of Runway 22R. Mr. Adams looked out and saw that the Learjet was

actually number one on taxiway "Z," and the Continental to ORD was actually behind the Learjet. He advised the Cab Coordinator, Michell Barrett, that the strip was misplaced in the bay and then she corrected the sequence. In fact Mrs. Barrett's statement shows that she assumed responsibility for allowing the aircraft to depart "number 3," and she chose not to bother Mr. Adams about the problem because he was too busy with arrivals. Mr. Adams then did the most expedient thing possible and launched the Learjet, as it was the next aircraft up for departure. He then placed the Continental in position on the runway. He was then advised that the Continental was to be held from departing, and then a few seconds later, he was told to release the Continental and cleared it for takeoff.

All of this activity was extremely distracting to Mr. Adams, who at one point lost his situational awareness, and thought he had mistakenly cleared an aircraft to cross the runway in front of departing traffic.

Meanwhile, there was no release time written on the strip and the Cab Coordinator Michell Barrett's statement indicated that she wasn't even aware of any release time. In fact the Ground Controller Eric Sherer's statement indicates he was also not aware of a release time.

Mr. Rushing did not convey this information to Mr. Adams or anyone else as far as anyone knows.

The witness statements clearly show that Mr. Adams was never ordered to do what has been alleged by Mr. Rushing. It is impossible for Mr. Adams to comply with an order that was never relayed to him. For these reasons, Reason 1 of the Notice of Proposed Suspension ("Notice") should be invalidated.

Mr. Adams did not shout "numerous profanities" at, nor "disparage" Mr. Rushing as alleged in Reason 2 of the Notice. While there was a heated conversation between Mr. Rushing and Mr. Adams, there was no disrespectful direct use of profanity aimed at Mr. Rushing. The nature of that heated conversation was testified to by Randy Throckmorton. He testified that Mr. Rushing came down from the cab seeking Mr. Adams "like a guy in a bar going after another guy." He clearly told this to Mr. Lehmann during his interview, whereby Mr. Lehmann seems to have tried to get this fact removed from the statement by Mr. Throckmorton.

What seems to have happened was that Mr. Rushing incorrectly assigned blame to Ray Adams for almost missing a release time for Continental, and then overreacted and removed Mr. Adams from position for an offense that did not actually take place. Subsequently Mr. Rushing went looking for Mr. Adams to confront him in a hostile and menacing manner that has been the subject of past warnings. Whereupon Mr. Adams, who was upset and felt threatened by the imposing presence of Mr. Rushing did have to tell Mr. Rushing to "get out of my face" several times. As Randy Throckmorton mentioned, Mr. Rushing's demeanor was angry and he was encroaching on Mr. Adams personal space, making him nervous about whether Rushing would physically strike Adams.

To the extent there was profanity used by both parties, it was used in that context and was instigated and provoked by Mr. Rushing. In addition, it is well known that Mr. Rushing uses similar profanity routinely in the workplace and this is confirmed by many others in the facility. Despite the fact that use of profanity is a common occurrence generally, no other controller in recent memory has been suspended for use of profanity and Mr. Adams should not be subjected to disparate treatment or discrimination. Supervisors and employees are held to the same standard of conduct concerning profanity.

Mr. Adams did not refuse to leave the facility "as instructed," as is alleged in Reason 3 of the Notice. He was told several times that he could remain in the NATCA office for the remainder of his shift. NATCA representative Edward Kragh told Robert Lehmann that he had specific knowledge of that fact because he spoke to Mr. Rushing that evening on the phone, yet no interview of Mr. Kragh was conducted. Please confirm this fact with Mr. Kragh.

The initial discussions involving Mike Reilly resulted in Mr. Adams' request for administrative leave being denied, and Mr. Reilly conveying Mr. Rushing's instruction that if Ray Adams wanted to leave, then he must use his own annual or sick leave. Mr. Kragh then spoke with Mr. Rushing around this time via telephone and advised Mr. Adams that he would be allowed to remain in the NATCA office until the end of his shift.

Later, Mr. Adams received information from the security guard that he was to be escorted out of the building. He advised the security guard that he would gather his personal effects and would leave. She told him that was alright and he gathered his effects and waited to be escorted out. He was told by Mike Reilly a short while later, that the

police were there to escort him out. He left the building as instructed without incident. He spoke briefly with the police outside about the incident and drove his car out of the facility with the police in trail.

The witness statements the agency collected support this and there are additional witnesses to support these facts. The allegation that of "Failure To Comply With Supervisory Instruction" cannot stand as no order was given to leave the building at approximately 9:00 PM and when Mr. Adams was eventually told to leave under escort, he did so.

Reason 4 of the Notice is particularly troubling to Mr. Adams as Mr. Rushing alleges that he made a disrespectful gesture to him when he was directed to leave the facility. This is simply not true.

Mr. Reilly was in Mr. Adams presence when he was eventually ordered to leave and there were security guards and police there also. No witness statements corroborate Mr. Rushing's allegation. The Agency has the duty to initiate a fact finding investigation of alleged conduct and performance deficiencies. If the facts do not support the charges made, the Agency has the responsibility to the employee to dismiss those charges. Here it is plain and clear that there is no evidence that supports this allegation and Reason 4 of the should also be withdrawn.

The Agency did not adequately apply the Douglas Factors test to the disciplinary action proposed against Mr. Adams. The previous discipline referred to in the Notice is under review by the Office of Special Counsel for a possible Prohibited Personnel Practice or reprisal against Mr. Adams for whistleblowing. This should not be considered as a predicate for this current action. The evidence presented does not support the charges nor the serious penalty proposed. The imposition of this suspension is inconsistent with other penalties meted out by the Agency against other controllers in Mr. Adams' position. Mr. Adams has no operational errors on his record in his 7 years as a Newark Tower controller and he has always received good performance ratings. He has been an air traffic controller for nearly 19 years at four different control facilities. With all due respect, it seems as though Mr. Rushing has a personal grudge against Mr. Adams and has made improper accusations against Mr. Adams either as a result of mistake, misperception, or hostility.

The Agency's proposed suspension is not for just cause and does not promote the efficiency of the service and should be dismissed immediately with prejudice and Mr. Adams should be made whole for all lost pay and benefits."

As you can see, management's version of the story is not consistent with the facts as presented by the witnesses and the standard operating procedure of the control tower operation. You should know that the Agency although over a year has past from the May 30, 2008 date of the alleged incident, the Agency has not actually made final disciplinary action proposed here. If the Agency had, the matter would have been before an arbitrator and I believe I would prevail. The supervisor who made both the February 2008 and May 2008 allegations against me is not credible. In fact, I have evidence which has presented to the Inspector General's office of this supervisor covering-up his own operational error. That offense is grounds for removal.

In summary, this case must remain open indefinitely until such time a complete investigation and evaluation can be accomplished. I am formally requesting a meeting with the head of your department, your supervisor, Mr. Hubbard and you. Please contact me to arrange a date and time. I am available to meet in the OSC offices in Washington, D.C.

I am copying this letter to the Members of Congress representing New Jersey and other officials who I believe need to be aware of the lack of concern by the Special Counsel for whistleblowers' rights.

I await your reply and look forward to a meeting,

Raymond Adams

Raymond Adams

National Air Traffic Controllers Association
New Jersey Legislative Coordinator
President-Elect Newark Airport
Safety Representative
201-362-9305
rayadams@yahoo.com