



U.S. OFFICE OF SPECIAL COUNSEL

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April 27, 2011

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-08-3138

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find agency reports based on disclosures made by Timothy Funari, a whistleblower at the Department of Transportation (DOT), Federal Aviation Administration (FAA), D21 Terminal Radar Approach Control (TRACON), Detroit Metropolitan Airport (DTW), Detroit, Michigan. Mr. Funari, who consented to the release of his name, alleged serious safety-of-flight issues as well as concerns surrounding the reporting and investigation of operational errors and deviations.

Mr. Funari's allegations were referred to the Honorable Ray LaHood, Secretary of Transportation, to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). Secretary LaHood tasked the investigation of the matter to the Honorable Calvin Scovel, III, DOT Inspector General. OSC received a report dated March 22, 2010, and three supplemental reports dated June 25, 2010, November 12, 2010, and February 3, 2011, from DOT. Mr. Funari provided comments on the agency report and each of the three supplemental reports. The agency's findings and Mr. Funari's comments are jointly discussed below.

The agency investigation partially substantiated Mr. Funari's allegations. The Office of Inspector General (OIG) substantiated that TRACON staff did not know which separation requirements to follow regarding successive arrivals into three of the surrounding controlled satellite airports. In addition, OIG found that TRACON controllers (controllers) have violated FAA Order 7110.65 by allowing aircraft to come within 1.5 nautical miles of the adjacent airspace boundary without prior coordination or documented coordination procedures. The investigation also substantiated that controllers have operated dual Instrument Landing System (ILS) approaches in violation of FAA Order 7110.65, and that Quality Assurance Review procedures and investigation into operational errors and deviations have been inadequate.¹

As reflected in the initial report, the investigation did not substantiate allegations that the TRACON's missed approach procedures violate FAA Order 7110.65, that TRACON officials certified a controller-in-training before his performance justified it, or that a TRACON Operations Manager manipulated a March 2008 Runway Occupancy Time survey to produce favorable results. Finally, the report indicated that OIG was unable to substantiate by a

¹ The Instrument Landing System is a precision landing system that provides a path for exact alignment and descent of an aircraft on final approach to the runway.

preponderance of the evidence that TRACON officials purposely failed to detect, report, investigate, and address operational errors or deviations, or discouraged employees from reporting such events. The Honorable J. Randolph Babbitt, FAA Administrator, accepted the report's findings, and set forth a corrective action plan.

The supplemental reports focused on the findings with respect to the execution of missed approach procedures. When a missed approach occurs at an uncontrolled airport, such as Oakland/Troy Airport or Monroe Custer Airport, an aircraft is authorized by a TRACON controller to execute the published missed approach or alternate missed approach procedure. At that point, although radar service would be terminated, the controller would maintain safe separation from other aircraft along the aircraft's projected flight route from the uncontrolled airport to the holding pattern area designated in the missed approach or alternate missed approach procedure. In response to Mr. Funari's suggestion, the facility requested and received guidance from the FAA's Central Service Area (CSA), which advised that controllers are expected to plan for the possibility of aircraft executing missed approaches and are expected to apply standard separation if such an event occurs. FAA officials do not consider it necessary to suspend air traffic operations at Detroit City or Windsor airports in the event of a missed approach at Monroe Custer because the relatively small number of aircraft using those airports is unlikely to result in a loss of separation between those aircraft and an aircraft conducting a missed approach.²

OSC requested information concerning a possible loss of separation that occurred on January 16, 2010, which had been disclosed by Mr. Funari but not addressed in the report.³ An FAA Air Traffic Safety Oversight Service (AOV) Quality Assurance employee, who was tasked with obtaining the data necessary to review this suspected event within the 45-day retention period, delayed the request, and failed to obtain the data within the required time period. The data was destroyed and AOV was unable to determine if a loss of separation occurred. The FAA employee was counseled concerning her failure to request retention of the data. Mr. Funari voiced concern regarding the failure to request the retention of data in connection with the event. He personally forwarded information concerning the event to OIG investigators within four days after it occurred. The initial report to OSC indicated that the data was being reviewed; yet, the supplemental report acknowledged that it had not been retained.

Mr. Funari subsequently provided additional data regarding this event. This data was provided to the agency by OSC. Based on its examination of this data, the agency concluded that the controller did not protect the airspace authorized for an aircraft attempting to land at Oakland/Troy Airport. As a result, if this aircraft had executed a missed approach, it would have entered the same airspace that was being occupied by an aircraft descending to land at DTW.⁴

² The agency acknowledged that it obtained its information during the investigation by interviewing TRACON Frontline Managers, not by monitoring satellite airport operations.

³ The date of this incident is identified in the reports and Mr. Funari's comments as both January 16, 2010, and January 17, 2010, because of the FAA's use of Greenwich Mean Time for all operations. The event occurred on January 17, 2010, at approximately 3:00 a.m. Greenwich Mean Time, which was approximately 10:00 p.m. Eastern Standard Time on January 16, 2010.

⁴ The specific incident is described here for clarity: Aircraft NWA2434 is descended into the holding pattern airspace that is required to be protected for the missed approach segment of the RNAV (GPS) Runway 9 approach into Oakland/Troy Airport (VLL) to which aircraft N3845G had earlier been cleared. Neither communications nor

Mr. Funari commented that it is unacceptable to permit the controller to wait until the controller knows the aircraft has executed a missed approach, and then scramble to start separating from it. In his view, this airspace should be protected for the first aircraft and the second aircraft should not be allowed to land at, depart from, or enter the holding pattern for DTW until the controller knows the first aircraft will not be executing a missed approach. Mr. Funari stated that the discussion of this allegation needs to focus on whether the second aircraft was allowed to transit the protected airspace, rather than on whether there was a loss of separation during the execution of a missed approach procedure. He asserted that the cause of incidents such as this one is management's selective enforcement of orders and regulations.

The supplemental reports also addressed whether TRACON officials have purposely failed to detect, report, investigate, and address operational errors and deviations, and discouraged employees from reporting events. The agency's initial report only partially substantiated this allegation. The report was unable to substantiate Mr. Funari's allegations that the culture within the TRACON does not allow or support the reporting and investigating of air traffic events; then-Operations Manager Thomas Boland told Mr. Funari not to investigate possible losses of separation unless they are "ugly;" Mr. Boland fostered a passive approach to the investigation of suspected air traffic events; or Mr. Boland actively attempted to interfere with the investigation, observation, and reporting of operational errors and deviations. However, the report did substantiate that Mr. Boland referred to a whistleblower at another TRACON as a "squealer" and that operational errors and deviations reported by Mr. Funari have not been investigated in accordance with Quality Assurance Review Requirements.

The agency report stated that the individuals they interviewed, which included Frontline Managers, disagreed with Mr. Funari's description of the Detroit TRACON culture. According to the report, these individuals stated "that management has consistently instructed them to report all air traffic events and that they are unaware of any instances of discouragement as alleged by the whistleblower." In contrast, Mr. Funari referenced a 2009 CSA Safety Assurance Group Operational Evaluation Team report (CSA report), which is included in the agency's third supplemental report. The CSA report stated that there was confusion among controllers about which events need to be reported:

It was shared by [controllers], 'If an event is not that serious then it doesn't need to be reported.' To illustrate the point the following example was offered: 'an aircraft climbed four hundred feet above the assigned altitude. There was no loss of separation, so it wasn't

radar contact existed with the VLL arrival, cancellation had not been received, and the incident occurred within 30 minutes of the time N3845G received its approach clearance. N3845G is what is referred to as an unreported, non-radar arrival. Radar service had been terminated so controllers did not know where the aircraft actually was at the time aircraft NWA2434 was cleared into protected holding pattern airspace. The last they know, the aircraft was headed to VLL with a clearance that authorized it to continue to the missed approach holding point climbing to 2,700 feet. NWA is cleared to descend into the VLL holding pattern without being cleared through the altitudes assigned to N3845G. Controllers are required to separate from the unreported aircraft. When a controller loses radar and communications on the aircraft cleared for that approach (the now unreported, non-radar aircraft) the TRACON continues to vector traffic through the missed approach route of flight and holding pattern contrary to FAA Order 7110.65 requirements.

so bad.’ Another comment was ‘getting pilots in trouble for a minor infraction isn’t good customer service or being a good team player.’ It appears norms and misperceptions exist around ‘the seriousness of an event being used as a determining factor in decisions made about what events, including pilot deviations to report.

OSC asked the agency to comment on its conclusions that TRACON management did not discourage the reporting of operational errors and deviations in light of the CSA report. The agency responded that the evidence they collected did not permit them to conclude that Detroit TRACON management tacitly approves of controllers’ not reporting air traffic events. The agency noted that it has developed a new Quality Assurance Review Directive and Reporting form. It has also contracted with a former Frontline Manager to conduct weekly audits. In response, Mr. Funari stated that the agency did not explain why it does not view the CSA report as support to substantiate his allegations.

Finally, Mr. Funari provided comments on the substantiated allegation that controllers have operated dual ILS approaches in violation of FAA Order 7110.65. Paragraph 5-9-7.b of this order sets forth six conditions that must be met when applying reduced separation minima on dual ILS approaches. Mr. Funari disclosed that the controllers at the Detroit TRACON selectively enforced one of these six requirements—the requirement for one-mile of straight flight and a period of level flight immediately prior to the aircraft intersecting the ILS final approach. The agency issued a memorandum to the controllers on May 27, 2009, in an attempt to remedy this problem. However, Mr. Funari found this action to be insufficient and noted that this problem continues to occur on a regular basis. Mr. Funari documented several of these violations in the attachments to his second supplemental comments. The implication of these continued violations, according to Mr. Funari, is that hundreds of operational errors and/or deviations caused by these violations are not being reported.

As required by law, 5 U.S.C. § 1213(e)(3), we are now transmitting to you the report, the supplemental reports, and the whistleblower's comments. We have reviewed the original disclosures, the agency report and supplemental reports, and Mr. Funari's comments. We find several aspects of the reports particularly troubling. First, we find it unreasonable that the agency failed to ensure that data from the January 16, 2010, incident was maintained despite the fact that Mr. Funari advised OIG of this potential loss of separation four days after it occurred, and suggest that this supports Mr. Funari's assertion that the credibility of the agency's findings is questionable. Second, we find it unreasonable that violations of the dual ILS approach procedures in FAA Order 7110.65 continue to occur two years after OSC referred this allegation to the Secretary of Transportation.⁵ Finally, we find it unreasonable that the agency concluded that TRACON management did not discourage the reporting of operational errors and deviations in light of the evidence, particularly the CSA report and Mr. Funari's testimony as a manager. With respect to the other allegations, OSC has determined that the agency reports contain all of the information required by statute, and that the findings of the agency head appear to be

⁵ It has been brought to OSC's attention that the FAA's Office of Audit and Evaluation is currently reviewing this issue. However, this investigation is not connected to OSC's referral.

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reasonable. Notwithstanding this determination, we note that Mr. Funari has raised several issues that warrant the agency's consideration as it contemplates future policies and actions.

As required by law, 5 U.S.C. § 1213(e)(3), we have sent copies of the reports and Mr. Funari's comments to the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure and the Chairman and Ranking Member of the Senate Committee on Commerce, Science and Transportation. We have also filed copies of the reports and Mr. Funari's comments in our public file, which is available online at www.osc.gov, and closed the matter.

Respectfully,

A handwritten signature in black ink that reads "William E. Reukauf". The signature is written in a cursive style with a large, looping initial "W".

William E. Reukauf
Associate Special Counsel

Enclosures