

## **REDUCTION-IN-FORCE KEY POINTS**

First let me start by thanking Richard Anderson (PIE) and Scott Malon (MCN) in particular, as well as, all the NAATS Directors and Kate Breen for the opportunity to attend a 4-day MSPB course in September. Though I was never told, I knew the invitation came with strings attached. Because of their support and generosity, I am sharing all I with everyone interested.

### **FAA violated the following laws -**

- 1) FAA maliciously prohibited my right to compete for retention. Title 5 of the Code of Federal Regulations, Part 351, Subpart D, § 351.402(a), states, "Each agency shall establish competitive areas in which employees compete for retention under this part." § 351.402(b), states, "A competitive area may consist of all or part of an agency."**

#### **PC's viewpoint:**

The FAA purposefully limited the competitive areas to areas so small as to prohibit a competition for retention. Though I am unsure of the boundaries of my competitive area, I am certain the only employees in my competitive area were FAA Automated Flight Service Station employees. Since every employee in my competitive area was terminated, there was no one to compete with for retention. (Do not confuse "competitive area" with "area of consideration")

The Agency violated the letter and the spirit of **Title 5 of the Code of Federal Regulations, Part 351, Subpart D, § 351.402(a)** and did so with contempt for its AFSS employees. **§ 351.402(b)**, states, "A competitive area may consist of all or part of an agency." The Agency could have easily complied with this law by establishing competitive areas large enough to provide an opportunity for the affected employees to "compete for retention", as required by the law, rather than establishing competitive areas so small as to make it impossible to compete.

The FAA willfully chose to violate this law.

- 2) FAA did not provide descriptions of competitive areas. Title 5 of the Code of Federal Regulations, Part 351, Subpart D, § 351.402(c), states, "Descriptions of all competitive areas must be readily available for review."**

#### **PC's viewpoint:**

I have never been given a description of my competitive area. I have asked. My Air Traffic Manager said that he did not know what the competitive area for our facility was.

- 3) **FAA did not give due effect to employees' performance ratings.** Title 5 of the United States Code, Part III, Subpart B, Chapter 35, Subchapter I, Section 3502(a)(4), states, *"The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to – efficiency or performance ratings."*

Title 5 Code of Federal Regulations, Part 351, Subpart D, § 351.401, states, *"Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in subpart E of this part."* Subpart E, § 351.504(b)(1), states, *"An employee's entitlement to additional retention service credit for performance under this subpart shall be based on the employee's three most recent ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices, except as otherwise provided in paragraphs (b)(2) and (c) of this section."* Section 351.504(d)(3) credits, *"Twelve additional years of service for each rating of record with a Level 3 (Fully Successful or equivalent) summary."*

PC's viewpoint:

The FAA gave no consideration for Employee's performance ratings when ranking employees on the retention lists. I had a Fully Successful summary and should have been credited with twelve additional years of tenure.

The FAA established a retention register, in order to give the appearance that they were complying with the law, even though the Agency had no intention of using the register, however, the Agency failed to credit the employees for performance thereby violating the law and the *"employee's entitlement to additional retention service credit"*.

- 4) **FAA failed to offer employees assignments to other positions.** Title 5 Code of Federal Regulations, Part 351, Subpart F, § 351.603, states, *"An employee reached for release from a competitive level shall be offered assignment to another position in accordance with subpart G of this part. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer under subpart G, the employee shall be furloughed or separated."*

PC's viewpoint:

The FAA purposefully limited the competitive areas to areas so small as to prohibit an employee from being offered an assignment to another position. Though I am unsure of the boundaries of my competitive area, I am certain the only employees in my competitive area were FAA Automated Flight Service Station employees. Since every employee in my competitive area was terminated, there was no one to compete with for retention. (Do not confuse "competitive area" with "area of consideration")

Of more than 2000 FAA Automated Flight Service Station Air Traffic Control Specialists affected by this reduction-in-force, not a single employee

was successful in exercising their bump and retreat rights of being offered assignment to another position.

- 5) **FAA failed to cite authority to release employees without regard to retention standing.** **Title 5 Code of Federal Regulations, Part 351, Subpart F, § 351.605**, states, *“When an agency will abolish all positions in a competitive area within 180 days, it must release employees in group and subgroup order consistent with §351.601(a). At its discretion, the agency may release the employees in group order without regard to retention standing within a subgroup, except as provided in §351.606. When an agency releases an employee under this section, the notice to the employee must cite this authority and give the date the liquidation will be completed. An agency may also apply §§351.607 and 351.608 in a liquidation.”*

PC's viewpoint:

My Notice of Reduction-In-Force consisted of four pages along with Attachments A, B, C, and D. My Notice did not cite the FAA's authority to release me without regard to retention standing.

- 6) **FAA failed to provide employees with notice of eligibility for reemployment.** **Title 5 Code of Federal Regulations, Part 351, Subpart H, § 351.803(a)**, states, *“An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration and career transition assistance under subparts B (Reemployment Priority List), F, and G (Career Transition Assistance Programs) of part 330 of this chapter.”*

PC's viewpoint:

I was not given information concerning the right to reemployment consideration nor do I know anyone in my facility that was given information concerning the right to reemployment consideration.

Though the FAA provided me with a Notice of Reduction-in-Force along with Attachments A, B, C, and D, there was no information provided concerning my *“right to reemployment consideration”*.

- 7) **FAA failed to give employees information about Reemployment Priority List (RPL).** **Title 5 Code of Federal Regulations, Part 330, Subpart B, § 330.203(b)**, states, *“At the time it gives a specific RIF notice of separation or a Certification of Expected Separation, the agency must give each eligible employee information about the RPL, including appeal rights”*.

PC's viewpoint:

My specific RIF notice of separation consisted of four pages along with Attachments A, B, C, and D. There was no information about a

Reemployment Priority List or a placement program for its employees that the FAA intends to operate. I have been told by the regional FAA Human Resource Personnel Management office that the retention registers will not be used.

Note: § 330.201(c), states, "An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees and obtains OPM concurrence that the program satisfies the basic requirements of this subpart." I contend that the FAA needed to "give each eligible employee information about the RPL" even if the information was that the agency need not maintain a distinct RPL because it is operating a placement program and obtained the U.S. Office of Personnel Management concurrence to do so. Even so, the FAA failed to give me information about appeal rights concerning the RPL and/or their substitute placement program.

## 8) and other laws.

### PC's viewpoint:

Be sure to make reference to "and other laws" to provide yourself with an opportunity to add to your list at a later date.

## FAA violated the following procedures –

- 1) **FAA did not have a hiring freeze.** The Federal Aviation Administration Human Resource Management **Order 3350.2C, Chapter 1, Section 7(b)**, states, "Separation of employees by RIF shall take place only after all reasonable alternative actions have failed to solve the surplus problem." **Section 7(c)** states, "Some of the alternatives to conducting a RIF are: attrition, hiring freeze..."

### GT's (IKK) viewpoint:

The FAA has not made every reasonable effort; in fact, they have made an effort to circumvent the procedures in FAAO 3350.2C in order to guarantee the contractor, Lockheed Martin Corporation, a trained workforce. Since there is currently no private sector equivalent of an FAA Flight Service Station, LM has only one source to draw from in order to staff and operate the facilities on Day One of the contract. The FAA has taken deliberate steps to ensure that current FSS Controllers are not placed in other jobs within the FAA but will have no choice other than to accept separation from federal service and accept a job with LM. The FAA has denied this and claimed to have made every reasonable effort, but this averment is belied by their actions.

The FAA began publishing an informational newsletter during this process titled The Briefer. In the FAA A76 Briefer, Oct 03 Issue, Page 4 (Attachment XX), the FAA states "The AFSS function cannot be performed without its existing, highly skilled employees. Therefore, decisions regarding placement programs and expanded opportunities for retirement are extremely complex. The agency has to

*maintain a balance between its desire to provide a soft landing to its employees while continuing to provide a high level of service".* This document shows that as early as October of 2003 the FAA intended to limit the options provided to employees because of the need to provide critical services through the last day before the contract was implemented. A reasonable action, therefore, would be to make any transfer dates of personnel to other positions within the FAA effective on Day One of the contract, October 4, 2005. Instead, the FAA has chosen to make every effort to ensure that the contractor has a complete workforce on October 4, 2005, by refusing to place more than a token number of employees elsewhere within the FAA as of this date. Because of the ability to make selections effective at the end of the transition period, there has been absolutely no basis for the FAA to balance its "desire" to assist employees against operational need, since that need ends October 4. The FAA is under no obligation to meet the needs of the contractor or to force federal employees into Lockheed's ranks.

Interestingly, during this time when the FAA was "balancing" operational needs against the needs of the employees they managed to place XX managers and supervisors in other FAA jobs, many times leaving employees on temporary details to manage the facilities. Their definition of operational need was obviously different for management.

The FAA has not only failed to enact a hiring freeze on positions within the FAA, they are actively recruiting and hiring thousands of new applicant for jobs which the current FSS Controllers have been determined to be "well qualified" for. According to statements made by the administrator and documents published by the FAA the intent is to hire at least 12,500 controllers over the next ten years. Roughly 600 have been hired in FY 2005, and 1,000 more are scheduled to be hired beginning October 1, 2005 for FY 2006. During this time 531 AFSS Controllers submitted applications for these jobs, of which 498 were found to meet the eligibility criteria. Of these 498, only 123 were placed into these positions.

PC's viewpoint:

Since **Order 3350.2C, Chapter 1, Section 7(c)**, lists "hiring freeze" an alternative then it must be considered a reasonable alternative action. **Section 7(b)**, states, "*Separation of employees by RIF shall take place only after all reasonable alternative actions have failed to solve the surplus problem.*"

An U.S. Office of Personnel Management guide titled The Employee's Guide to Reduction in Force (RIF), under the RIF Alternatives section, states, "*RIF is the last option an agency should pursue when reorganizing or dealing with budget cuts. Other options, including hiring freezes, early retirement, buyouts, and directed reassignments, should be tried before resorting to RIF.*"

An FAA paper titled Air Traffic Controller Hiring Summary dated June 30, 2005 indicates the FAA hired 141 students to train as Air Traffic Controllers during the months of March, April, and May, 2005 and proposed to hire an additional 168 students to train as Air Traffic Controllers between June 1, 2005 and September 30, 2005. This is unreasonable.

- 2) **FAA did not have directed reassignments.** The Federal Aviation Administration (FAA) Human Resource Management **Order 3350.2C, Chapter 3, Section 31(b)(2)**, states, "*Some of the actions, aside from attrition, that can be considered and included in the staff reduction plan are: Reassignments (either within or outside the commuting area) to balance the work force, if feasible.*" **Order 3350.2C, Chapter 3, Section 32**, states, "*In planning a RIF, a major reorganization, a transfer of function, or a major consolidation, a voluntary request for reassignment may be accepted from any employee in a unit whose competitive level is likely to be affected by the reduction.*" **FAA Human Resource Policy Manual Directive EMP-1.14**, states, "*An employee may initiate a request for reassignment outside of the announced vacancy process. These candidates must be eligible for non-competitive permanent internal assignment under the provisions of 3, above, and must submit written requests for reassignment directly to the LOB in which they seek assignment. Requests may be for positions within or outside of their current organization and may involve a move from one geographic location to another.*"

PC's viewpoint:

Paul Cahoon, an AFSS Air Traffic Controller in Anniston, AL was affected by the reduction and submitted a voluntary request for reassignment on August 5, 2005.

Mr. Cahoon's written request for reassignment stated he was "*willing to consider a permanent reassignment to any job title under any job classification that performs any job functions anywhere in the continental United States with the exception the State of California, as long as, the reassignment offer does not involve a reduction in pay.*"

The Agency's response was, "*Employees are never randomly reassigned.*"

(This is a good place to mention an instance that you know where an employee was randomly reassigned in the past, such as, from an ATA to AFSS. You may want to mention how a ZJX ARTCC ATCS was reassigned to ORL ATCT causing a vacancy announcement to be cancelled. If you have any knowledge of the ZJX-ORL instance or other recent examples please forward to me at [bruzcru@gmail.com](mailto:bruzcru@gmail.com) so I can collect and distribute.

The Federal Aviation Administration advertised vacancy announcements for positions within the FAA rather than selecting from the retention registers. I do not know of an instance where an employee who had received a notice of reduction-in-force was reassigned. This violated my rights because it denied me of the opportunity to use my retention tenure to secure continuing federal employment.

A retention list has no purpose if it is not used to retain employees but rather set aside in favor of vacancy announcements that allow the Agency to pick and choose who they save and who they terminate.

The FAA allowed numerous Automated Flight Service Station (AFSS) Specialists to relocate to Alaskan AFSSs while a reduction-in-force was in

process without using the retention registers. These vacancies should have been filled using the retention registers.

- 3) **FAA did not provide retraining.** **FAA Human Resource Policy Manual (HRPM), EMP 1.22, Section 3**, states, "*Retraining opportunities will be provided generally for positions in FAA where managers determine there is the greatest need.*" **Title 5 of the United States Code, Part II, Chapter 11, Section 1101**, states, "*CIVIL SERVICE REFORM ACT OF 1978 FINDINGS AND STATEMENT OF PURPOSE Section 3 of Pub. L. 95-454 provided that: "It is the policy of the United States that - the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess;"*".

PC's viewpoint:

Paul Cahoon, an AFSS Air Traffic Controller in Anniston, AL submitted a request for retraining on June 24, 2005. The Agency's response was, "*Human Resource Policy Manual (HRPM) EMP 1.22, Career Transition Program does not allow for retraining.*" I contend **Human Resource Policy Manual (HRPM), EMP 1.22** not only allows retraining but states it "*will be provided*".

**Title 5 of the United States Code, Part II, Chapter 11, Section 1101**, states, "*It is the policy of the United States*".

The Memorandum of Agreement (MOA) between the National Association of Air Traffic Specialists and the Federal Aviation Administration, Section 7, states, "*The Agency shall provide career transition assistance to all surplus and displaced bargaining unit employees in accordance with HRPM Career Transition Program EMP 1.22, Article 108 of the CBA, and this agreement.*"

Title 5 CFR Part 330

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=e9c3e9dbf92b440a5d31e5f3f7b434d3&rgn=div5&view=text&node=5:1.0.1.2.42&idno=5#5:1.0.1.2.42.2.10.3>

Title 5 CFR Part 351

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=d05184c4471e8473d8714d5763243f86;region=DIV1;q1=%20reduction-in-force%20;rgn=div5;view=text;idno=5;node=5%3A1.0.1.2.51>

Title 5 CFR Part 351 (Final Rulemaking)

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?IPaddress=&dbname=1998\\_register&docid=98-15860-filed](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?IPaddress=&dbname=1998_register&docid=98-15860-filed)

Title 29 CFR Part 1607

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=d970ccf18a2091f0f5bb7d88628f2f02&rgn=div5&view=text&node=29:4.1.4.1.8&idno=29>

CFR: Retrieve by CFR Citation  
<http://www.gpoaccess.gov/cfr/retrieve.html>

Title 5 USC, Part II, Chapter 11  
[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse\\_usc&docid=Cite:+5USC1101](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+5USC1101)

Title 5 USC, Part III, Subpart B, Chapter 35, Subchapter I, Section 3502  
[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse\\_usc&docid=Cite:+5USC3502](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+5USC3502)

FAA Personnel Management System  
<http://www.faa.gov/ahr/policy/pms/pmsch1.htm#staf14>

FAA Order 3350.2C  
<http://www.faa.gov/ahr/policy/order/orders/33502c.cfm>

FAA HRPM EMP-1.7  
<http://www.faa.gov/ahr/policy/hrpm/emp/Emp-1-7.cfm>

FAA HRPM EMP-1.9  
<http://www.faa.gov/ahr/policy/hrpm/emp/Emp-1-9.cfm>

FAA HRPM EMP-1.10  
<http://www.faa.gov/ahr/policy/hrpm/emp/Emp-1-10.cfm>

FAA HRPM EMP-1.14  
<http://www.faa.gov/ahr/policy/hrpm/emp/emp-1-14.cfm>

FAA HRPM EMP-1.22  
<http://www.faa.gov/ahr/policy/hrpm/emp/emp-1-22.cfm>

GPO Access  
<http://www.gpoaccess.gov>

Qs & As from AFSS Briefings  
[www.faa.gov/ahr/competitive/QA.doc](http://www.faa.gov/ahr/competitive/QA.doc)

MSPB Home  
<http://www.mspb.gov>

FAA 10-Year Air Traffic Controller Staffing Plan



<http://www.faa.gov/apa/pr/pr.cfm?id=1904>

Form 3330-43-1

[jobs.faa.gov/forms/3330\\_431.pdf](http://jobs.faa.gov/forms/3330_431.pdf)

FAA: All Current Policy Documents

<http://www.faa.gov/ahr/policy/Other/all.cfm?RequestTimeout=1000>

### **Remedies:**

I request to be made whole.

I request to be reimbursed for wages that I would have accrued if I had not been unfairly terminated.

I request all of my unused annual leave at the time of termination be credited as valid time and useable towards any federal retirement plan including the FAA Air Traffic Controller Early Retirement Plan.

I request all of my unused sick leave at the time of termination be credited as valid time and useable towards any federal retirement plan including the FAA Air Traffic Controller Early Retirement Plan.

I request to be credited for the accrued annual leave that I would have earned since October 3, 2005, if I had not been unfairly terminated.

I request to be credited for the accrued sick leave that I would have earned since October 3, 2005, if I had not been unfairly terminated.

I request to be reimbursed for all of my Attorney's fees relating to this appeal.

I request an appropriate dollar amount to be determined by the MSPB court for compensatory damages.

I request to be assigned as an Air Traffic Control Specialist at a Level 5, 6, 7, or 8 FAA Air Traffic Control Tower of my choosing or an immediate retirement annuity with no penalty for age.

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Just a few quick thoughts

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MSPB is the best choice; I am also looking into filing a secondary appeal with OPM.

It's far better that your appeal is well-thought than rushed.

Make your appeal as professional as possible.

Do not use many ALL CAPS, **bold words**, underlined phrases, or **highlighting**.

MSPB is a very serious court. Most of their judges serve long tenures.

Write as if you are addressing someone with no knowledge of the subject.  
Use short sentences.

Use short paragraphs; making sure each sentence in the paragraph refers to the first sentence in the paragraph. Keep your thought in chronological order.

Distinguish between facts and opinions by using "I believe, I contend, I think" for your opinions.

Remember facts are irrefutable. The court will frown on appellant/agency who dresses an opinion to look like a fact or who unsuccessfully refutes a fact. Be careful.

In your initial statement of appeal, there is no need to 'prove' anything. The court will ask you to prove yourself later. Simply state the facts and your opinions.

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I have provided everything I can think of. I hope this will do. I have been more than willing to share all that I know and I will continue to do so. It is extremely important that each of you forward me things that you know and/or have.

If you don't think it's important, give me the opportunity to throw it away. Everyone has at least something worth contributing. Even if you do not send it, at least tell me what you have. Copies of FAA Flyers. Inside information. Email responses from the FAA. Hearsay. Ideas. Angles of thought. Websites. I'll take anything. If it is of any importance, I will compile and resend. I ain't asking for prayers or atta boys (though they will be appreciated), I'm asking for input.

And if you get a chance, thank Greg McGann of IKK. He contributed.

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