

Sander Levin

U.S. House of Representatives
9th Congressional District, Michigan
May 12, 2016

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, D.C. 20590

Dear Secretary Foxx:

All too often in today's globalized economy, multinational corporations develop creative ways to compete, whether it be seeking lower tax rates, weaker labor standards, or the more lax environmental provisions. In the context of aviation services, certain airlines have adopted "flags of convenience" to take advantage of weaker standards or more profitable regulatory regimes. Norwegian Air International (NAI) is a striking example of this practice. As its name implies, Norwegian Air is a Norwegian company, but has registered itself in Ireland to avoid Norwegian labor standards and employ its crews using short-term contracts governed by Singapore's, yet another country, labor code. Put simply, NAI is circumventing its home country's labor laws in order to hire its crews using cheaper foreign contracts.

Despite these facts, the Department of Transportation (DOT) has tentatively granted Norwegian Air's application to provide permanent service to the United States. In doing so, DOT is arguing that it is *required* to grant Norwegian Air's application.

This is simply not the case. The statute at issue provides DOT with ample discretion, allowing DOT to undergo a public interest analysis. DOT argues that it is not allowed to perform such an analysis given the presence of an Open Skies Agreement between the United States and EU, but merely points to legislative history to support its contention. The same Senate Report asserts, however, that DOT "still retain[s] the power to withhold a permit where issuance would not be in the public interest."¹

The statute clearly does not require DOT to grant an application where the grant would be inconsistent with the public interest. Thus, DOT should use its discretion to perform a public interest analysis in this case. And when DOT completes its public interest analysis, NAI's use of a flag of convenience demands that DOT reject their application. The U.S. statute explicitly requires DOT to consider "fair wages and working conditions" in its public interest analysis and the Open Skies Agreement itself asserts that the agreement is "not intended to undermine labor standards" and that this principle "shall guide the Parties as they implement the agreement..." In fact, this language was added in 2011 with the intent of providing parties a basis for addressing these types of issues.

¹ S. Rep. No. 96-329, at 4 (1979).



It would be a mistake to base this decision on an unnecessarily restrictive legal opinion on such an important and precedent-setting issue. On this issue and other international economic issues like it, it is incumbent upon the U.S. government to fully use the tools it has available to support U.S. workers and U.S. competitiveness.

With regard to Norwegian Air's application, DOT has discretion in making its decision. And the underlying agreement asserts that labor standards are not to be undermined. With this in mind, I strongly urge DOT to reverse its tentative decision to grant Norwegian Air a foreign air carrier permit.

Sincerely,



Sander M. Levin
Member of Congress