

## SoundOff

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APA Spends \$\$\$\$\$\$ C&R Enhancement But Still Restricts Disabled Members- No "likes" for MDD Pilots: BOD fails to cure disparate treatment of disabled APA Members in blatant violation of the ADA, LMRDA, and ADA, leaving association exposed and vulnerable...Why?

8. Text:

BOD fails to cure disparate treatment of disabled APA Members in blatant violation of the ADA, LMRDA, and ADA, leaving association exposed and vulnerable...Why?

While last week's APA Comm Blast touts C&R enhancements, sadly myself and another 239 LAA disabled MDD pilots can't click the new "like" button - much less post on C&R anymore. This matter should seriously concern each and every APA member, including every BOD and Nat. Officer, as even if not now disabled, anyone of you could unexpectedly suffer the misfortune of suddenly, have losing your medical. If that ever happens to you, please be aware that your yellow union has a long history of abandoning disabled pilot's representation, not protecting their collectively bargained benefits or seniority rights, refusing to process meritorious grievances, working hand in glove with the Company, and ending many pilot's careers in the process. In fact, earlier this year APA's former General Counsel, Steven Hoffman, solicited sworn testimony of two senior Flight Department managers, in an effort undermine another disabled pilot's contractual claims in federal court, allowing the company to subjectively reinterpret the plain unambiguous language of the JCBA; not only to that pilot's detriment, but in so doing they sabotaged the collectively bargained rights of all APA members going forward.

Yesterday on 12/13/16 the BOD had the opportunity to do the right thing and democratically grant C&R access to all APA members as required under the LMRDA, APA C&B and PM, but refused to adopt Resolution 2015-10 Rev.1. Yet, another epic fail for APA, the BOD seems unaware or uncaring of the substantial liability the association continues to be exposed to via blatant violations of the ADA, LMRDA and RLA. Why doesn't APA act like a real democratic labor union for once, and immediately implement the lawfully required C&R "enhancement" of complying with the LMRDA Union Member Bill of Rights requirement to allow freedom of speech and assembly in the union hall, and allow free and democratic discussion between all members in the virtual union hall in accordance with APA PM 2.04. Although the C&B is deemed to be the supreme law of the union, it provides that APA is governed by parliamentary law of Roberts's Rules, which follows a hierarchy of laws, making statutory law of the LMRDA and RLA superior to the APA C&B. Indeed, in *Sproc v. Nat. Officer, Arbitator Valverde* held that the APA C&B cannot preclude statutory laws like the RLA, or the LMRDA as is the case here. Therefore, APA continues to be in blatant violation of the LMRDA and in turn the C&B, and APA must reinstate MDD pilots to C&R immediately, before being subject to a LMRDA class action that provides for substantial punitive damages.

One has to wonder why association's former President CA Keith Wilson

enacted the unlawful C&R lock-out in the first place, much less why APA continues to waste hundreds of thousands fighting this/his issue, via two federal lawsuits in UT, a fed suit in FL, a fed suit in PA, and newly filed fed suit in AZ, two Article VII's, and a AAA arbitration. Outrageously, just last week APA paid two attorneys and four witnesses to go through a 4 day district court trial in West Palm Beach; wherein after being queried by the judge each and every day, CA Keith Wilson was either unable or unwilling to articulate a reasonable rationale as to why he unilaterally locked out 233 disabled APA members; albeit for the record, he most certainly did so at the behest of the APA Legal brain trust's (Jamhof and B. Boggeess) fatally flawed legal advice, which ultimately led to blowing up APA's E&O insurance policy. We now have damning evidence that the APA legal brain trust was behind the lock-out; indeed, our union's own attorneys, have and continue work "hand in glove" with Company attorneys to defeat claims of pilots who the company deems undesirable or corporate trouble makers. In many cases not only did APA Legal roll-over, but was complicit, and even went so far as abandon representation of MDD pilots and argue against disabled pilots in federal court, in a despicable attempt to bolster company arguments, in an outrageous effort to help defeat the rightful statutory and contractual claims of certain "problem" pilots. Indeed, APA's former General Counsel has been caught making material misrepresentations of fact and law to two different federal judges, and as a result is now facing a pending Rule 11 motion for sanctions, along with an attorney discipline investigation in the Utah District Court for his violations of the professional rules of conduct. The only thing APA's former General Counsel and current APA Legal Director cares about is preserving their corrupt fiefdom and plush jobs at the member's expense, without having to ever answer for their failures. For all the same sort of reasons cited here and similar course of conduct, former APA President Hunter tried to stop the bleeding and terminated APA's current Legal Director. Unfortunately, the next APA National Officer regime under the "leadership" of CA's Hill and Westbrook foolishly brought him back, and the association has suffered for it ever since.

Fortunately, our newly elected President CA Dan Carey has identified many of these issues, and on his first day in office wisely terminated APA's former General Counsel, James & Hoffman but now he must finish the job and drain the swamp in APA Legal, and put an end to their continued fatally flawed and costly legal decisions, which have put many of our pilot's careers at risk and left entire association in jeopardy. While the C&R lock-out is a debacle in and of itself, and likely already cost the association over \$250k in legal fees to date and counting, not to mention the loss of APA's E&O insurance, it pales in comparison to APA's disparate treatment of its disabled members in the SLI proceedings. Which will surely morph into an expansive and costly class action - unless APA pulls and plugs the wronged MDD pilots to their original relative positions on the ISL.

The good news is that APA's failures can easily be mitigated, thereby eliminating millions of association liability and there is past-practice and precedent to do so. First, our current APA President can easily interpret the C&B at the stroke of a pen declaring MDD pilots as active members as they had always been treated before CA Wilson's regime, and direct IT to press a button, to restore the status quo of MDD pilots' C&R access just as they had enjoyed 20 some years before the unlawful lock-out. Second, the APA BOD must direct the ISL DRC must mitigate the egregious failures of the AAPSIC, and immediately take steps to protect MDD's original relative seniority on the ISL. In fact, two months ago CA Carey successfully obtained a new LOA forcing the company to finally abandon its unlawful 5-year sick leave rule contained in the CBA Sec 11.D.1, which violated the Americans With Disability Act's (ADA) strict prohibition on "no-leave" policies. However, that agreement failed to reinstate the 228 LAA MDD pilots who were already removed from the pre-merger list in violation of the CBA, and not included on the ISL. Yet as part of those LOA negotiations somehow one of DFW base Chairman's favored LAA MDD pilots, out on disability for over 8 years, who was dropped from the pre-merger list and excluded from the ISL (and doesn't even hold a medical) got favorable treatment, with the company agreeing reinstate him to the ISL. This all surely smacks of cronyism, but wouldn't if that same treatment was equally extended to the other 228 MDD's left behind with no guarantee to reinstatement to the ISL. As a result multiple disabled LAA pilots have seniority claims pending before the ISL Dispute Resolution Committee, so APA has the opportunity to fix this before it's too late. APA must direct the ISL DRC to the right thing and treat all LAA MDD equally and fairly as mandated by McCaskill-Bond Act and the Allegheny-Mohawk LLP's. All LAA MDD disabled pilots must have their seniority protected on the ISL, just as was done for some of their LAA MDD peers, and all their LUS disabled pilot colleagues. To do otherwise is arbitrary, discriminatory and in bad faith, and a blatant breach of DFR. Please insist that your BOD's to step up on this matter, just like the DFW Chair has already unilaterally done for his disabled MDD buddy.

Meanwhile, the membership is completely unaware and was never notice about CA Wilson's 11th hour ex post facto C&B Interpretation issued on his last day in office on June 30th, which suddenly declared that MDD pilots are not really non-members as he previously represented as justification for his unlawful C&R lock-out, but instead he now believes they are inactive APA members. That Interpretation specious, and disingenuous at best, as it was intended to realign APA's institutional position with APA's former General Counsel's misrepresentation to the Utah Judge that because I am a member of APA I was bound by the C&B, and thus ceded my right to APA to resolve (abandon) my grievance's in its sole discretion. Its simply breathtaking that on April 22, 2014 the former APA President, CA Wilson made an "executive decision" declaring myself

and all similarly situated MDD's as non-members to justify revoking their C&R access without cause or notice; then three months later APA's former General Counsel misrepresented to a federal judge that I was an APA member, for the improper purpose of stripping away my right to have my grievances heard before a System Board. Tellingly, in Sep 2014 the company capitulated and agreed to arbitrate my grievances, so long as APA agreed to so. To date, APA Legal has steadfastly refused to docket my grievance seeking reinstatement to the seniority list, leaving me "remediless" in violation of the congressional mandate to not leave RLA employees without a forum to present their grievances. See *Vaca v. Sipes*, 386 U.S. 171, 185-86, 87 S.Ct. 903, 914, 17 L.Ed.2d 842 (1967). Regardless, to date APA has failed to officially notice any of its MDD pilot members that our former President unilaterally changed their status to that of inactive members, and APA's Sec-Treasurer continues to flagrantly violate her obligations under C&B Art. III Sec. 4, by refusing to issue all MDD special membership cards, making her guilty by default of the current Article VII charges pending against her for failure to issue MDD pilots membership cards. As a result, 239 MDD pilots have been locked out of the virtual and physical union hall for over two years, during the most crucial negotiations of our careers, involving post-BK negotiations of the JCBA and SLI, which negatively impacted the contractual benefits and seniority rights of all MDD pilots. In closing, I'm sure DCA Chairman will once again wisely advise the BOD to "request a legal briefing on this C&R post.", just like he did regarding the March 2014 C&R Post which precipitated the C&R lockout, caution is advised because disconcertingly this time around the BOD won't be getting a "bunch of those union rep insurance policy forms" to hide behind." Hopefully such naked exposure will compel the APA BOD to do the right thing for its disabled MDD members once and for all. While some like the DFW Chair may throw fear grenades of potential DFR claims if APA reinstates the 228 MDD pilots, he has lost sight of the forest for the trees, a class action by all MDD pilots is the real threat, which can wipe out APA and any uninsured Officers or Staff, who continue to act outside the scope of their authority and in breach of their fiduciary duty to the membership. The BOD should seriously consider hiring outside counsel to perform an independent audit into the conduct of APA Legal and former General Counsel, to identify all of their failures and implement institutional controls so that it will never happen again. Sadly, as it now stands the APA lawyers cannot and are not held accountable for their rampant failures, but rest assured in the event of a substantial damage award each and every member vis a vis the association will ultimately pay the price.

The membership must demand action and answers and from your BOD and Nat Officers! Ask them the following questions...

1. Why does APA continue to arbitrarily lock-out disabled MDD members

from C&R in violation of the LMRDA, while allowing access for non-member RET, and inactive member FUR, MDI and TAG?

2. Is the BOD participating in a cover-up, to avoid exposing APA's rampant representation failures and disparate treatment of its disabled members, some of whom were targeted for cost savings by the company? If so why?

3. What actions if any has the BOD taken to cure, APA Legal Department's complicity in AA Medical's "Nurse Case Management Pilot Disability Cost Savings Scheme" (AA Medical now shuttered, bad actors terminated, and outrageously rehired by APA and Harvey Watt), its mutual selection of fraudulent disability claims reviewer, WME (principals now in prison for three counts felony medical claim fraud) and the some 84+ disabled pilots who were fraudulently stripped of their valuable disability income and benefits?

4. Are the current BODs (other than DFW Chair) aware that APA under the CA's Hill and Westbrook regime, in consultation with the APA Legal brain trust, made an institutional decision to abandon representation of all disabled members, which continues to this day, to include refusing to prosecute numerous pending disabled member's grievances (some for over 9 years)?

5. Why were LUS pilots on MDSB >5yrs protected on the ISL, while most of the 239 LAA disabled MDD pilots were not?

6. Why were a certain group of 11 LAA MDD pilots (senior CA w/o grievances or lawsuits) protected on the ISL and treated more favorably than the other 228 LAA MDD pilots?

8. How much legal exposure does APA's and the AAPSIC's ISL breaches of DFR present to the association?

Back of the envelope ball park math, say 239 MDD pilots x \$250k/yr x 10yrs lost forward career earnings totals \$597,500,000.00

Now let's say that just only 5%, or 12 MDD pilots like myself who can now hold a 1st class medical, but are *unable to finish their career due to APA's representational failures*, that would still amount to almost \$30,000,000.00 dollars exposure to the association; and more likely with ancillary *damages balloon to an amount that will far exceed APA's assets, thereby rendering the association insolvent.*

9. Why didn't the new LOA eliminating the Company's unlawful 5 year sick leave policy protect the seniority reinstatement rights of MDD Pilots?

10. When APA negotiated as part of the LOA, that the Company to Agree to reinstate a specific LAA MDD pilot (despite him not holding a medical),

who worked on DFW committee for CA Westbrook, why didn't APA ensure that the other remaining 228 Disabled pilots were treated equally and fairly?

11. Why is there not institutional controls to hold APA Attorneys and Staff accountable for their egregious failures, after all members can be charged under Article VII, why not APA Attorneys and Staff?

12. Why did the BOD refuse to adopt Resolution 2015-10 Rev. 1?

I would post this on C&R for all the membership to see if I wasn't unlawfully locked out of the virtual union hall in violation of both the LMRDA and the APA C&B. Regardless, we are now expecting imminent rulings from the FL District Court Judge, and the AAA Arbitrator to issue an Order forcing APA to reinstate MDD pilots to C&R. Otherwise, other related C&R cases will continue to be litigated at even greater expense to the association. Accordingly, APA leadership should immediately call a SBOD specifically dedicated to these addressing the issues raised herein, APA's Officers simply have no choice, and have a fiduciary duty but to resolve these issues and eliminate the millions of legal liability and exposure to the association, once and for all.

Until then APA = Yellow Union!

Time for ALPA if they will have us - sadly the millions of APA's DFR exposure will give them pause and likely cause them to rethink any ALPA-APA marriage.

Fraternally,  
Lawrence Meadows  
MIA/FO/777/MDSB