

Exploiting Global Loopholes

By ALPA Staff



Norwegian Air Shuttle (NAS) is exploiting legal and regulatory loopholes in extreme new ways to gain an economic edge in competing for international long-haul passengers, as this article will explain. ALPA is vehemently opposed to the new scheme and is working to raise awareness of this situation. A parallel to draw about the damage that this new elaborate business scheme could cause U.S. airlines and their workers is with the U.S. maritime industry.

Branded as “Norwegian,” NAS is the third-largest low-cost airline in Europe behind easyJet and Ryanair. Created in 2002 as a short-haul airline, Norwegian flew 17.7 million passengers in 2012. The airline achieved a 13 percent annual growth rate, with 70 percent of its expansion in 2012 occurring outside of Norway.

This year, NAS became the only European budget airline to fly transatlantic routes, according to Reuters. NAS already serves New York and Bangkok from Scandinavia and plans to add service to Los Angeles and Oakland, Calif., and Orlando, Fla. On October 17, the airline announced that it plans to launch service in 2014 to New York, Los Angeles, and Fort Lauderdale, Fla., from London Gatwick.

The Norwegian airline’s strategy for building its low-cost long-haul growth appears to be partly centered on operating the newest, most fuel-efficient airplanes—many of which NAS is eligible to finance at below-market rates through the U.S. taxpayer-funded Export-Import Bank of the United States. (See “ALPA Takes Legal Action to Reform Ex-Im Bank,” April 2013, page 23.)

Norwegian’s fleet is currently made

up of 77 airplanes, including B-737-300s, -737-800s, and -787 Dreamliners. The average fleet age is 4.6 years, according to the company’s website. In January 2012, Norwegian placed an order for 222 airplanes that included B-737 MAXs, -737-800s, and Airbus A320neos and was valued at \$22 billion. “I think the A350 and the 787 are the only ones that you can fly low-cost long-haul because they are so much lower in operating cost,” Bjorn Kjos, founder and CEO of NAS, said recently in *Flightglobal*.

Kjos’s low-cost, long-haul strategy is also focused on attaining lower labor costs by bypassing local labor laws and undermining unionization. In a bid to circumvent high labor costs and taxes in Norway, NAS is basing its crews in Spain, Thailand, and the United Kingdom. Kjos told *Flightglobal* that avoiding Scandinavia “gives us stability of costs.” He added, “It [has] lower-paid crews, and everything is cheap.” NAS has even discussed establishing pilot bases in the United States.

NAS’s strategy appears to be to register its B-787s in Ireland, use pilots working under Singapore contracts, and base them in Bangkok. According to the Centre for Aviation, to facilitate this plan Norwegian is reportedly seeking an air operator’s certificate (AOC) and an air carrier operating license from the Irish Commission for Aviation Regulation (CAR). If Norwegian obtains an Irish AOC and permanent Irish registry for its airplanes, the airline will likely be successful in circumventing Norwegian labor laws that otherwise would protect the employment rights of flight crews.

In a recent presentation before the Associations of Star Alliance Pilots Executive Board, Capt. Rune Sundland,

who flies for SAS/Scandinavian Airlines, said that NAS currently employs approximately 1,000 pilots. About 650 of the NAS pilots are employed under a collective labor agreement and approximately 350 have individual contracts with the airline. The contracts make the employee responsible for all taxes and compliance with health and safety regulations and afford neither collective bargaining nor labor protections. In 2012, the Norwegian Airline Pilots Association challenged NAS’s basing crews in countries outside of Norway, but a final decision has not been reached in that case.

The NAS scheme raises serious questions about which labor laws apply to its pilots and other employees, particularly when they are being based outside the home country. The airline and its pilots began new collective labor agreement negotiations in October, and the stakes could not be higher.

From a global industry perspective, ALPA is concerned that the NAS scheme could set a disturbing precedent for the industry, and lessons from the maritime industry show exactly what is at stake.

Danger: Flag of convenience environment

In the U.S. maritime industry, the business practice of registering ships under a “flag of convenience” allows companies to register merchant ships in a foreign state to avoid its own country’s regulations, taxes, and labor costs. “Open registries” refers to the countries or organizations that register foreign ships and where more than 90 percent of that country’s vessels are foreign-owned.

According to a 1993 *Baltimore Sun* story, reflagging outside the United States saves \$3 million per year per ship.



The *Sun* goes on to report that “foreign-flag vessels can hire an entire crew of third-world sailors for the cost of one American seaman.”

Currently, the Marshall Islands, Singapore, and Liberia represent the top three registries for U.S.-owned merchant ships, accounting for more than 50 percent of the total registries. Today, roughly 80 percent of the world fleet is operating under a flag of convenience from an open registry, and the number of jobs for seafarers in the U.S. maritime industry has plummeted from more than 100,000 in 1960 to a mere 2,500 in 2012.

Danger: Weak labor laws or scope contract provisions

Unfortunately, the NAS pilots do not have strong scope language in their collective bargaining agreement, and this has allowed the company to operate “experimental routes” using pilots not

on the NAS seniority list—a loophole that opened the door for the new NAS scheme. In addition, the NAS pilots are struggling to protect their existing scope provisions because of the ambiguity regarding which country’s labor laws apply to the airlines’ long-haul flying. “Scope is one thing, but it is the ability to defend your scope provisions that really matters,” said Sundland.

For these reasons and others, it is essential for ALPA pilots to maintain strong and forward-looking scope language in collective bargaining agreements.

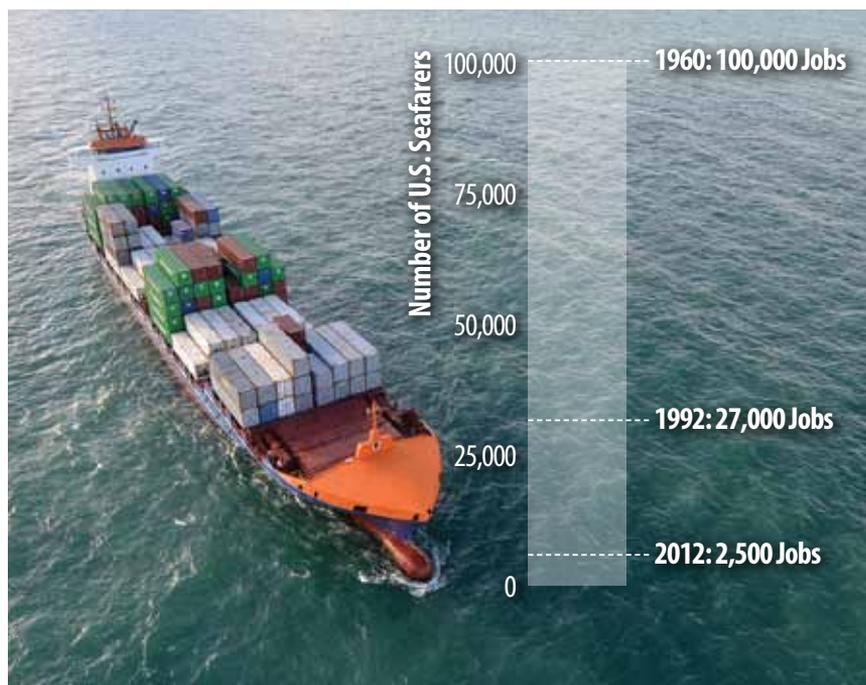
Danger: Lack of home government support for industry

During the U.S. House of Representatives May 21, 2013, “Hearing on Maritime Transportation: The Role of U.S. Ships and Mariners,” Duncan Hunter (R-Calif.), chairman of the

Subcommittee on Coast Guard and Maritime Transportation, noted in his opening statement, “over the last 35 years, the number of U.S.-flagged vessels sailing in the international trade has dropped from 850 to less than 100. In the same period, we have lost over 300 shipyards and thousands of jobs for American mariners.”

Today, U.S. flag ships carry domestic traffic almost exclusively. Without the Jones Act of 1920, which protects against foreign cabotage in U.S. domestic waters, there might be no U.S. merchant marine at all.

At a time when U.S. airlines face intensifying competition from foreign airlines—many of which are heavily state-backed—strong U.S. government policy and leadership is absolutely critical to ensuring that U.S. airlines have a level playing field on which to compete in the global marketplace. 🌐



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