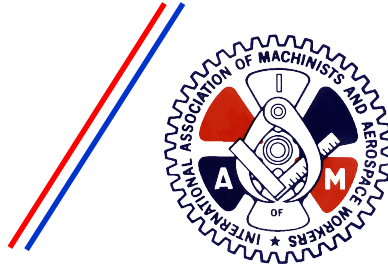


**International
Association of
Machinists and
Aerospace Workers**



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Upper Marlboro, MD 20772-2687

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967-4500

December 14, 2021

The Honorable Eric J. Soskin
Inspector General
US Department of Transportation
1200 New Jersey Ave SE
West Building, 7th Floor
Washington, DC 20590

Via US First Class Mail

Re: Possible misuse of CARES Act funds

Dear Mr. Soskin,

We write to you on behalf of the International Association of Machinists and Aerospace Workers, AFL-CIO (IAMAW), on behalf of the more than two hundred mechanics who work in Aguadilla, Puerto Rico at Lufthansa Technik Puerto Rico, LLC. Besides representing aerospace workers across North America, and lobbying in support of programs that preserve continued stability and continuity of work in this industry during these uncertain times, the IAMAW is heavily invested in the how the terms of payroll support funding are being provided by the Federal Government, and how these funds are being monitored for misuse and abuse.

Therefore, we feel it is our duty to raise concerns that have been brought to our attention about the possible misuse of CARES Act (the Act) funds by Lufthansa Technik Component Services LLC, and its wholly owned subsidiary, Lufthansa Technik Puerto Rico, LLC.

Based on what we have been able to ascertain, both from public documents and information provided by on-site employees, it appears that these contractor recipients of millions of dollars in Federal CARES Act funding have either violated their payroll-related commitments that allowed them to receive such funds, or that they have otherwise been misrepresenting information to allow them to obtain funding, violating the letter and intent

of the Act and its payroll protection requirements. We therefore urge your department and any other appropriate agency to investigate the issue further.

Factual and Legal Overview

PSP1. The CARES Act, enacted on March 27, 2020, created the Payroll Support Program (PSP1) for air carriers and certain contractors. PSP1 provided financial assistance to over 600 companies, supporting hundreds of thousands of aviation jobs.

According to publicly available Treasury information, Lufthansa Technik Component Services LLC (LTCS) supports payroll for Lufthansa Technik Puerto Rico, LLC (LTPR), a wholly owned subsidiary of LTCS.¹ Both entities are covered contractors under the Act. LTCS applied for (and received) support under PSP1.²

The size of each PSP1 grant issued was calculated based on a company's payroll costs between April and September of 2019. Under the PSP Agreement, each recipient of funding is required, among other considerations, to abide by the following terms and conditions:³

- use the payroll support funds exclusively for the continuation of employee wages, salaries, and benefits;
- not conduct involuntary terminations or furloughs of employees, through September 30, 2020; and
- not reduce pay rates or benefits of employees, through September 30, 2020.

The Treasury Department, which is responsible for distribution of the funds, explained the conditions for receipt of the funds available to recipients under the Act. The guidance states that “until September 30, 2020, **the borrower will maintain its employment levels as of March 24, 2020**, to the extent practicable, and in any case will not reduce its employment levels by more than 10 percent from the levels on such date.”⁴ (emphasis added).

PSP2. The Consolidated Appropriations Act, 2021, enacted on December 27, 2020, created the Payroll Support Program Extension (PSP2) for passenger air carriers and certain contractors. LTPR and LTCS applied for (and received) support under PSP2.⁵

¹ See Footnote 10 at <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-extension-payments> (indicating wholly owned nature of relationship and asserting that LTCS provided “notes related to payroll support provided to...Lufthansa Technik Puerto Rico, LLC” [by LTCS]).

² See <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-payments>.

³ See “Report on Pandemic Relief for Aviation Workers Pursuant to Section 4118 of the Coronavirus Aid, Relief and Economic Security Act,” p. 3, available at <https://home.treasury.gov/system/files/136/Sec4118ReporttoCongressPayrollSupportNovember2020.pdf>.

⁴ See <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

⁵ See <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-extension-payments>.

To be eligible to receive funds under PSP2, applicants must have agreed to the following relevant terms and conditions:

- use such payments exclusively for the continuation of employee wages, salaries, and benefits;
- refrain from conducting involuntary terminations or furloughs, or reducing pay rates and benefits, of employees of the applicant until March 31, 2021, or the date on which the applicant exhausts such financial assistance, whichever is later;
- not later than 72 hours after entering into a PSP2 agreement with Treasury, recall any employees involuntarily terminated or furloughed by the applicant between March 27, 2020 (for applicants that did not receive financial assistance under PSP1) or October 1, 2020 (for applicants that received financial assistance under PSP1), and the date of the applicant's PSP2 agreement; and
- compensate such returning employees for lost pay and benefits (offset by any amounts received by the employee from the applicant as a result of the employee's termination or furlough, including, but not limited to, furlough pay, severance pay, or separation pay) between December 27, 2020, and the date of the applicant's PSP2 agreement with Treasury.

PSP3. The American Rescue Plan Act of 2021 (ARP) authorizes the Treasury Department to provide up to \$15 billion to passenger air carriers and certain contractors for the continuation of employee payroll. To be eligible for PSP3, participants must have participated in the Payroll Support Program Extension (PSP2) under the Consolidated Appropriations Act, 2021, and the terms of eligibility were the same. LTPR and LTCS applied for (and received) support under PSP3.⁶

Timeline of Events

Based on data from the US Department of the Treasury, along with information provided by workers at LTPR, we have been able to piece together the following timeline of events. In short, millions of dollars in grants⁷ flowed to LTCS and LTPR, while employee wages and hours were improperly cut. The information points to either 1) LTCS and LTPR making inaccurate assertions on applications for funding, or 2) LTCS and LTPR taking actions to subvert the intent of the Act and its requirements while benefiting from inflated payroll numbers that did not directly benefit the workers it was intended to protect.

2020 Events

- On March 27, 2020, the CARES Act, including its relevant Payroll Support components, were enacted.

⁶ See <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-industry/payroll-support-program/psp3>.

⁷ See attached chart outlining total amounts distributed, compiled from the sources cited in this letter.

- Carriers started applying for grants right away, but there is no publicly available data for LTCS's initial application date.⁸
- Employee payroll documents show that starting with the May 4, 2020 pay period—reflected on the May 22, 2020 paycheck—mechanics at LTPR suffered a five percent (5%) reduction in their hourly rate of pay.
- Employee payroll documents show that starting with the May 4, 2020 pay period—reflected on the May 22, 2020 paycheck—mechanics' hours were reduced from 40 hours per week to 30-36 hours per week.
- During this timeframe—and after the Act was passed—some mechanics were laid off and/or furloughed for varying amounts of time.
- On August 25, 2020, LTCS' PSP agreement with the Government was “fully executed,” and LTCS received \$21.4 million dollars.⁹
- On or about August 24-25, LTPR stopped reducing employee hours and returned mechanics to a 40-hour per week workweek.
- Employee payroll documents show that this five percent reduction in employee pay continued through the end of December of 2020.

2021 Events

- On January 13, 2021, both LTCS and LTPR applied¹⁰ for funding under PSP2.¹¹
- On March 2, 2021, LTCS' PSP2 agreement with the Government was “fully executed,” and LTCS received \$7.2 million dollars.¹²
- On March 2, 2021, LTPR's PSP2 agreement with the Government was “fully executed,” and LTPR received \$2.5 million dollars.¹³
- On LTPR's March 26 pay date, employees received a “retroactive” payment, apparently intended to pay employees for the five percent reduction in pay. However, the amount only covered the disparity for January-March of 2021. LTPR also increased the employees' rate of pay by five percent, returning the rate of pay to what it had been in May of 2020 prior to the pay reduction.
- On June 10, 2021, LTCS' PSP3 agreement with the Government was “fully executed,” and LTCS received \$7.2 million dollars.¹⁴

⁸ See <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-payments> (application date blank). However, as discussed below, there were lengthy delays in processing applications at the commencement of the program—which some employers may have used to game the system.

⁹ See <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-payments>.

¹⁰ It is interesting that this is the only available “application date” for LTCS or LTPR in government data online; all other dates provided are merely the dates that full agreements were “fully executed.”

¹¹ See <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-extension-payments>.

¹² See <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-extension-payments>.

¹³ See <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-extension-payments>.

- On June 10, 2021, LTPR's PSP3 agreement with the Government was "fully executed," and LTPR received \$2.5 million dollars.¹⁵

Areas of Concern

PSP1. LTCS provided payroll support to LTPR, its wholly owned subsidiary, when it applied for (and received) support under PSP1.¹⁶ Not only did LTCS have to enter into an agreement that they would "refrain from conducting involuntary furloughs or reducing pay rates and benefits until September 30, 2020," but they were expressly instructed that "until September 30, 2020, **the borrower will maintain its employment levels as of March 24, 2020,**" and "will not reduce its employment levels by more than 10 percent from the levels on such date."¹⁷ (emphasis added). As it received payroll assistance for, and provided assistance to, LTPR, LTCS could not permit such reductions at LTPR.

Instead, mechanics' rates of pay were cut, their working hours were reduced, and they were laid off and/or furloughed. While we do not have access to the entirety of the employer's payroll database, the evidence produced to us to date by employees appears to show more than a "10 percent" reduction in employment levels.

PSP2. LTPR and LTCS each applied for (and received) support under PSP2.¹⁸ To be eligible to receive financial assistance under PSP2, contractor applicants must have agreed to "not later than 72 hours after entering into a PSP2 agreement with Treasury, recall any employees involuntarily terminated or furloughed." Applicants were also required to commit to compensating "such returning employees for lost pay and benefits (offset by any amounts received by the employee from the applicant as a result of the employee's termination or furlough, including, but not limited to, furlough pay, severance pay, or separation pay) between December 27, 2020, and the date of the applicant's PSP2 agreement with Treasury." While we do not have access to the entirety of the employer's payroll database, the evidence produced to us to date by employees appears to show this did not occur.

Furthermore, while LTPR paid a "retro" payment to employees in March of 2021 that coincided with the timing of the receipt of PSP2 funds, it covered only the five percent reductions in pay from January-March of 2021, and not the entirety of the timeframe where

¹⁴ See <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-industry/payroll-support-program/psp3>.

¹⁵ See <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-industry/payroll-support-program/psp3>.

¹⁶ See <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-payments>.

¹⁷ See <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

¹⁸ See <https://home.treasury.gov/policy-issues/coronavirus/assisting-american-industry/payroll-support-program-extension-payments>.

wages were improperly reduced, or while employees were furloughed or laid off, going back to May of 2020.

Subversion of Congressional Intent. The size of the PSP1 grants was calculated based on a company's payroll costs between April and September of 2019—in other words, the workforce employed prior to the beginning of the COVID-19 pandemic. Furthermore, the Department of the Treasury issued a clear mandate to employers receiving these funds to “maintain employment levels as of March 24, 2020.” There can be no question that the intent of these rounds of funding was to ***maintain payroll*** without a loss of jobs in the industry. Based on the available information and evidence we have reviewed, it appears that LTCS and/or LTPR have not complied with their obligations for receipt of these funds, and have subverted the intent of these grants by maintaining reduced wages and working hours for at least part of the period of time they obligated themselves to remain at status quo.

At a minimum, the Congressional intent behind these grants was so that companies would quickly sign agreements with the Treasury after the CARES Act was passed at the end of March, and then be barred from conducting any layoffs through September (since the government was footing the companies' payroll bills). For reasons unknown, the initial payments did not get issued to applications until later in 2020—but if such delays created a perverse incentive for employers to try to subvert their requirements to receive such funding under the Act, and to alter working hours and wages or to lay people off before “fully executing” their applications, that should also be investigated as part of a larger-scale inquiry into the use of CARES Act funds.¹⁹

Conclusion

We therefore ask that you investigate the above-referenced matter immediately. If we can be of any assistance as you conduct your investigation, please do let us know. We look forward to hearing from you.

Respectfully,



Laura Ewan
Associate General Counsel
IAMAW

¹⁹ See, e.g., “The Airline Bailout Loophole: Companies Laid Off Workers, Then Got Money Meant to Prevent Layoffs”, July 7, 2020, available at <https://www.propublica.org/article/the-airline-bailout-loophole-companies-laid-off-workers-then-got-money-meant-to-prevent-layoffs> (Citing example of Gate Gourmet, who applied for benefits in April 2020, but did not finalize its agreement until June 2020—and laid off employees before signing the agreement).

Cc: hotline@oig.dot.gov
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Via email

GVP Rickey Wallace
COS Craig Martin
GLR Alamazan, Sr.
SA Negron
SR Rodriguez-Baez