

Appeal to OCCC Member Associations

Gentlemen.

My name is John Warham. For those of you who do not know me, I am a past President of the Hong Kong Aircrew Officers Association ("HKAOA"), a founding OCCC Board member and a recipient of an IFALPA Presidential Citation for leadership and services to Member Associations in the Asia region. I am also a *49er*. I am writing to you to explain the current situation facing *The 49ers* and seeking your consideration and assistance.

Background. Because of a long ongoing dispute with CX management over rostering (scheduling) and flight safety issues, on 3rd July 2001 the Membership of the HKAOA voted to undertake Limited Industrial Action ("LIA"), such action to commence on a date to be determined. On 9th July 2001, before LIA had actually been implemented, CX management fired 49 HKAOA members stating that it was "*for no particular reason*". This action was part of their union-busting campaign. In response, *The 49ers* filed legal actions in a number of jurisdictions. Until recently, the HKAOA Membership supported its fired colleagues financially in pursuit of their legal actions.

Recent Developments. Towards the end of 2004, despite reservations being expressed to him personally by a number of *The 49ers*, the current President of the HKAOA entered into negotiations with CX management in an attempt to reach an out of court resolution to the situation. One of the reservations expressed was that the President also concurrently undertook the role of Chief Negotiator in contravention of industry best practice. The negotiations took place in secret with little consultation with those directly affected. In December 2004, again without any prior briefing or consultation with *The 49ers*, it was announced to the Membership by the current President that a resolution had been achieved. What has become known as "the offer" was then recommended for acceptance to the Membership as a whole.

"The Offer". The terms of "the offer" failed to meet any of the stated objectives agreed to prior to entering into negotiations, a fact that has been publicly acknowledged by the President, the General Secretary and the General Committee of the HKAOA. Those objectives are:

1. To ensure that Cathay Pacific pilots can never again be put in the position in which *The 49ers* have found themselves.

2. To ensure full reinstatement and proper compensation for *49ers* who are qualified and wish to return to work for CX and to ensure proper compensation for those who are not now qualified or do not wish to return to work for CX.

In short, “the offer” is wholly inadequate. It is a one-sided deal which not only greatly disadvantages *The 49ers* but also could actually be viewed as condoning CX managements’ actions. In addition, under its terms the HKAOA is required to sign a legally binding agreement that prevents it from offering any further assistance to *The 49ers* in their legal actions either now or in the future. This is limited not only to financial assistance, but also to facilitation, encouragement or assistance in kind, on pain of injunctive relief.

The Mechanism. Initially, the leadership of the HKAOA deadlined *The 49ers* and required them to either accept or decline “the offer” before they would be aware of the outcome of the vote by the Membership. This sequence was subsequently reversed. A poll of *The 49ers* then conducted by the HKAOA prior to the Membership vote showed that only 4 of them found “the offer” acceptable. This information was made public and, in February 2005, a resolution to accept “the offer” failed to be carried by a Membership vote.

This should have been the end of the matter. Prior to the resolution being voted upon, the President gave an undertaking that, should *The 49ers* and the Membership vote against accepting “the offer”, then the HKAOA leadership would recommend continuing down our current path.

However, this undertaking was reneged upon. Instead, proposals were put to the Membership to greatly increase their union dues purportedly to insure against a possible “doomsday” scenario of multiple legal losses in multiple jurisdictions; this despite the fact that we have consistently achieved successes in our legal actions and have had costs awarded in our favour. Not surprisingly, the motions to increase the dues failed to be carried. The resolution to accept “the offer” was then put to the vote again. This time it passed. Simultaneously, the leadership of the HKAOA announced that they were halving the dues.

The outcome is that all financial assistance and support of any kind for *The 49ers*’ legal actions has been withdrawn. Consequently, much against their better wishes, *The 49ers* have been placed in an invidious position whereby more than half of them have been forced to accept an offer that they did not want to accept and that the HKAOA leadership acknowledges is inadequate, unjust and fails to meet our objectives.

The Situation. Despite the coercion and pressure to which they have been subjected, 19 of *The 49ers* have decided to continue with their fight for justice and have not accepted “the offer”. These men and their families have been through 4 years of what can politely be described as pure hell. We have borne

the brunt of management's ferocious intimidation and all of us have suffered extreme stress, loss of our careers, financial ruin and health problems. Indeed, one *49er* – Greg England – lost his life shortly after he was fired.

One of our prime motivations has been that our union supported us in the quest for justice and fair treatment. That support has now been abruptly withdrawn despite the objectives remaining unmet. Furthermore, by accepting “the offer”, the HKAOA is legally precluded from assisting us in any way and, therefore, it cannot approach you with this request. We are sincerely appreciative of the excellent support that the OCCC has already provided, but you need to be aware that our unfair treatment remains ongoing today.

The remaining 19 men – which includes Greg England's family and estate – have chosen to continue to pursue the original objectives, to seek justice and to re-establish our professional reputations. The problem is that our finances are limited and we therefore seek your help.

Whilst the OCCC Board itself may not have sufficient disposable financial assets, it is not the OCCC Board *per se* to which we are appealing. We are appealing to you, the integral Member Associations and the 30,000 constituent Members, for direct financial assistance. This appeal falls firmly within the Coalition's “*Specific Objectives and Purpose*” and is amplified by the *Statement of Principles*, ironically both of which I helped to draft and approve.

The Legal Actions. We initiated legal proceedings in 4 jurisdictions: Hong Kong, UK, USA and Australia. The last 3 were challenged on jurisdictional grounds. In May this year, we created case law in the UK, which declares the right of any pilot based in the UK to be protected by the UK Employment Relations Act. This ruling covers not only pilots, but also all employees (e.g. North Sea divers) on similar contracts with overseas based “brass plate” companies. It may well be advantageous to employees of Oneworld Alliance companies based in the UK. In the USA, some plaintiffs have had their cases stayed on the grounds of *forum non conveniens* i.e. the US court wishes to see if the plaintiffs can obtain justice in HKG first before exercising their own powers.

The HKG action is crucial because it will obtain justice for *The 49ers* as well as obtaining greater contractual protection not only for CX employees but also for labour groups in HKG as a whole. The case before the Court is twofold:

1. Breach of employment contract; and/or
2. Breach of Section 21B(2)(b) of the Employment Ordinance, which protects against anti-union discrimination.

Labour protection legislation in HKG is rudimentary at best. It is essential that what legislation does exist is not further undermined by the actions of a dictatorial management that seeks the freedom to act without regard for the law.

Conclusion. Management embarked upon a union-bust that we fully expect to be declared illegal. There remain 19 49ers who seek justice and proper contractual protection for our fellow pilots. For the reasons outlined above, the HKAOA can no longer assist us in any manner. The OCCC was established, in part:

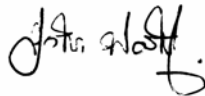
- ☐ *To secure uniform and united action in the common interest of the Coalition members;*
- ☐ *To further our mutual goals, the Member Associations commit to ... use all lawful, reasonable and appropriate actions to protect our members' contractual and lawful rights, career expectations and professional interests...*

Gentlemen, I am appealing to you for financial assistance in order to achieve our aims.

If you have any questions or would like further information, please contact me.

Thank you for your time and consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Warham'.

Captain John Warham
21st June 2005