LETTER
AIRLINE MANAGEMENT

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Federal Court Bars AFA From Self-Help Against Northwest Following Contract Rejection

The District Court reversed a Bankruptcy Court's holding that the Norris LaGuardia Act (NLGA) deprived it of jurisdiction to enjoin AFA from engaging in a work stoppage.

A federal district court in New York has held that the Association of Flight Attendants (AFA) may not engage in economic self-help in response to Northwest Airlines' rejection of its flight attendant collective bargaining agreement pursuant to § 1113 of the Bankruptcy Code. *See In re Northwest Airlines Inc.* (September 14, 2006). The District Court reversed a Bankruptcy Court's holding that the Norris LaGuardia Act (NLGA) deprived it of jurisdiction to enjoin AFA from engaging in a work stoppage.

Northwest filed a Chapter 11 bankruptcy petition in September 2005. The airline sought an order under § 1113 of the Bankruptcy Code permitting it to reject its collective bargaining agreements with six employee groups, including the flight attendants.[1] The airline reached consensual agreements with all of the employee groups except the flight attendants, who voted down a tentative agreement with Northwest.

In July 2006, the Bankruptcy Court granted Northwest's § 1113 motion, permitting it to reject its flight attendant collective bargaining agreement and implement new terms and conditions of employment. As required by § 1113, the Bankruptcy Court found that: rejection of the collective bargaining agreement was necessary to permit Northwest's reorganization; the union did not have good cause to refuse to accept the March 1, 2006 agreement; and

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[1] At the time Northwest filed its § 1113 motion, the Professional Flight Attendants Association (PFAA) represented the flight attendants. AFA subsequently replaced PFAA as the flight attendants' representative. Northwest and PFAA had been in negotiations towards a new contract since December 2004 pursuant to Section 6 of the RLA.

Bankruptcy Court Permits Comair to Reject Flight Attendants' Contract

On July 21, 2006, a federal bankruptcy judge in New York determined that Comair met the requirements of § 1113 of the Bankruptcy Code and should be permitted to reject its collective bargaining agreement (CBA) with its flight attendants, who are represented by the IBT. *See In re Delta Air Lines, Inc.* Under § 1113, an airline seeking to reject its CBA must show that it has made a proposal to its employees' authorized representative containing only the modifications to the CBA that are "necessary to permit the reorganization of the debtor" and that assure that affected parties are treated fairly and equitably; that the employees' representative refused the proposal without good cause; and that the balance of the equities favors rejection of the CBA.

In April 2006, the same court denied Comair's § 1113 motion, finding that the airline did not confer in "good faith" as required by § 1113 because it did not reduce the total value of its § 1113 proposal from the levels it had previously determined were necessary. For a discussion of the April 2006 decision, see the June issue of the Airline Newsletter, at www.fordharrison.com.

Following the court's April order, the parties resumed negotiations in May, which continued for several weeks until IBT presented what it termed its "Final Offer" on June 8. IBT's "Final Offer" included a 7% reduction in pay rates, a four-year "snap back" provision (which would return flight attendant pay rates to current levels for flight attendants with two to five years of service and give more senior flight attendants pay rate increases of 3.5% to 6.0%), mandatory company contributions to the 401(k) plans of senior flight attendants, and several other points. Comair responded to this offer on June 14, with a proposal that included a 7.5% reduction in pay rates and modification of certain work rules including continuous duty line scheduling (which permits a flight attendant to bid for a schedule requiring as little as 22 hours of duty but get full pay credit for 78 hours).

IBT rejected Comair's June 14 proposal as a basis for any further negotiations and stated that the union's June 8 written proposal was its last and final proposal. Accordingly, Comair filed its second motion to reject the flight attendants' CBA under § 1113, which the bankruptcy court granted. The court held that Comair's June 14 proposal was for modifications "necessary to permit reorganization" of Comair, as required by § 1113. Additionally, the court held that Comair complied with its obligation to confer in good faith as required by § 1113 and that IBT's refusal to accept the June 14 proposal was without good cause.

In finding that the modifications were necessary to permit Comair's reorganization, the court relied extensively on the testimony of F&H Solutions Group President Jerry Glass, who testified as an expert witness for Comair. The court held that Comair flight attendants' pay rates, work rules and benefits exceed those of flight attendants working for competing regional airlines and that Comair must significantly reduce its flight attendant costs to compete in the regional airline industry.

Addressing the issue of good faith, the court found that Comair's June 14 proposal contained a significant reduction in proposed cost savings sought from the flight attendants (from $8.9 million at the time of the April order to $7.9 million, a reduction of more than eleven percent). The court also noted that Comair's willingness to reduce the amount of pay and per diem reductions in the June 14 proposal was an attempt by Comair to meet the financial needs of the majority of the flight attendants. Further, the court held that Comair "has met the Union's needs with respect to job security and has shown great flexibility in apportioning the non-pay scale cost savings among work rule changes to increase productivity to more competitive levels which would have a minimum effect on minimum numbers of flight attendants."

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Recent Election Results

GoJet Airlines
IBT lost an election to represent Flight Attendants. Out of 111 eligible voters, IBT received 47 votes. There were 3 votes for other and 1 void vote. (Dismissal June 9, 2006).

Northwest Airlines
AFA won an election to represent the Flight Attendants. Out of 9,115 eligible voters, AFA received 4,360 votes, PFAA received 2,670 votes and there were 14 votes for other. (Certification July 7, 2006).

Cape Air (Hyannis Air Services)
IBT won an election to represent Pilots. Out of 91 eligible voters, IBT received 54 votes. (Certification July 11, 2006).

JetBlue Airways
On July 18, 2006, the NMB dismissed IAM's application to represent Fleet Service Employees because of an insufficient showing of interest.

Gulfstream International
IAM won an election to represent flight attendants. Out of 19 eligible voters, IAM received 11 and there was 1 vote for other. (Certification July 24, 2006).

American Eagle Airlines
TWU won an election to represent Ground School Instructors. Out of 11 eligible voters, TWU received 7 and there were 4 votes for other. (Certification August 4, 2006).

Piedmont Airlines
IBT won an election to represent Stock Clerks. Out of 28 eligible voters, IBT received 20 votes. (Certification August 30, 2006). •

Revision of Pension Law Includes Special Provision for Airlines

On August 17, 2006, President Bush signed into law the Pension Protection Act of 2006 (PPA), which has been described as the most extensive revision of the nation's pension law in three decades. One of the revisions provides a uniform set of rules for calculating an employer's required annual contribution to its defined benefit plans. Calculations are based on the plan's funding target, which is the present value of all benefits accrued under the plan. If the plan's assets are less than the funding target, the plan has a funding shortfall that will be amortized over a period of seven years.

Special rules apply to defined benefit plans maintained by commercial passenger airlines, and to plans maintained by businesses that provide catering services to those airlines, that were frozen as of July 26, 2005. These plans can elect to follow the new funding rules but amortize funding shortfalls over a period of 10 years, or to follow special funding rules that permit a 17-year amortization of the plan's unfunded liability. An election to use the special funding rules must be made by December 31, 2006 or December 31, 2007, depending on the first year to which the rules will be applied, and will apply to all future years. An election to use a 10-year amortization schedule must be made by December 31, 2007.

For more information regarding the PPA and its impact on employers in the airline industry, please contact any member of Ford & Harrison's Employee Benefits Group. •

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the balance of the equities clearly favored Northwest's rejection of the agreement.

Even after the Bankruptcy Court issued this decision, the airline and union continued to negotiate for a consensual resolution, during which time Northwest held off on implementing the terms and conditions authorized by the Bankruptcy Court's § 1113 order. Northwest and AFA representatives reached a second tentative agreement; however, the flight attendants also rejected this agreement. Northwest then implemented the terms and conditions authorized by the Bankruptcy Court's § 1113 order.

Once Northwest implemented, AFA announced that it would strike. The union indicated that it would engage in its trademarked "CHAOS" ("Create Havoc Around Our System") strike campaign, which consists of various tactical maneuvers such as intermittent strikes, short-term mass walkouts, and striking certain domiciles or pieces of equipment, all without advanced warning or notice. Northwest filed a complaint with the Bankruptcy Court seeking an injunction prohibiting AFA from engaging in CHAOS or any other form of economic self-help on the ground that it would violate the RLA, and prohibiting the union from exercising self-help until it had complied with its bargaining obligations under the RLA. The Bankruptcy Court denied Northwest's motion and the airline appealed to the District Court.

In a lengthy and thorough decision, the District Court reversed the Bankruptcy Court, concluding that the NLGA does not deprive federal courts of jurisdiction to enjoin compliance with the mandates of the RLA. In short, the court determined that the parties were not released from their obligation to negotiate under the RLA by either the entry of the § 1113 order or by Northwest's implementation of that order. Additionally, the court held that Northwest did not violate the status quo by implementing new terms and conditions of employment in accordance with the § 1113 order. The court held that AFA would violate its duty to exert every reasonable effort to settle all disputes if it engaged in a strike or other economic self-help in response to Northwest's action, and thus injunctive relief was appropriate.

The *Northwest* case is the first to address directly whether employees of an airline covered by the RLA are released to engage in self-help when the airline is authorized to and exercises its right to reject the parties' collective bargaining agreement under § 1113. In holding that the AFA could not engage in self-help, the court analyzed the language and purposes of the RLA, § 1113, the NLGA, and even the National Labor Relations Act (NLRA), as AFA had relied on several NLRA cases to support its position. The court concluded that the overarching goal of these laws is to ensure the peaceful resolution of labor disputes in the airline industry and avoid disruption of commerce. The court attempted to harmonize the laws in a way that furthers that goal and enables an insolvent airline to keep operating, while keeping the parties at the negotiating table under the auspices of a neutral public mediator in order to postpone "the final day of reckoning for any declaration that an unbreakable impasse has been reached."

First, the court examined when the parties are permitted to engage in self-help in a labor dispute subject to the RLA. AFA argued that its right to self-help accrued either: (a) when the Bankruptcy Court gave Northwest the right to reject its CBA under § 1113, which, AFA claimed, ended the Section 6 process and gave both parties the right to engage in self-help; or (b) when Northwest implemented the § 1113 order, which, in AFA's view, violated the RLA's status quo obligations.

The court rejected these arguments, noting that once Section 6 proceedings have begun, the power to terminate the process and release the parties to self-help lies with the NMB. The court refused to eliminate the NMB's role as a "neutral determinant of the timing of when Section 6 should properly end" by ruling that the proceedings are terminated by a § 1113 order or the airline's implementation of the order.

Additionally, the court held that Northwest acted lawfully, with express statutory and judicial authorization, in altering the status quo pursuant to § 1113. Northwest's action could not be deemed to have been arbitrary, taken in bad faith, impermissibly unilateral or otherwise unlawful sufficient to comprise a violation of Section 6. The court held that it would undercut the purposes of the RLA and the Bankruptcy Code to allow an insolvent airline to suffer a strike because it has implemented contract modifications permitted under the authority of the Bankruptcy Court.

The court distinguished cases decided under the NLRA, which permitted employees to strike in response to the employer's rejection of a collective bargaining agreement

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pursuant to § 1113. In doing so, the court noted that while the NLRA expressly protects the right to strike, in the RLA, Congress unequivocally indicated that it does not want the transportation industry disrupted by labor strife and designed a scheme to prevent strikes.

The court held that the employees represented by AFA must continue to work under the terms and conditions of employment imposed by Northwest pursuant to § 1113, which the Bankruptcy Court already had determined to be fair and equitable and rejected by the flight attendants without good cause. The parties must settle their disputes pursuant to the procedures in the RLA, the court ruled. Accordingly, the court preliminarily enjoined AFA from engaging in CHAOS or any other form of self-help until the Bankruptcy Court issues a decision on the merits of Northwest's claims.•

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The court held that Comair did not show a lack of good faith in rejecting IBT's four-year snap back demand. The court found the proposed snap back provision "intuitively inappropriate."

Additionally, the court held that IBT's demand for "mutual participation," under which negotiations with IBT would automatically reopen if Comair gave pay raises to other employee groups, was also untenable. Further, Comair did not demonstrate a lack of good faith by refusing to agree to IBT's demand for mandatory company contributions to the 401(k) plans of very senior flight attendants, a benefit that no other category of Comair employee receives.

In finding that that the June 14 proposal treated the flight attendants fairly and equitably, the court held that Comair made a "giant step" to accommodate the financial needs of the majority of the flight attendants by significantly decreasing the overall amount of cost savings requested from the flight attendants and by reducing the amount of pay and per diem reductions from $6.8 million out of the original $8.9 million proposal to $2.7 million out of the $7.9 million June 14 proposal. Further, the court noted that the Company's June 14 proposal would have left the Comair flight attendants with a pay scale and work rules that are materially higher and more beneficial than those of flight attendants at almost all other regional airlines.

The court found IBT's rejection of the June 14 proposal to be without good cause, essentially adopting its analysis on the issues of necessity, good faith, and fair and equitable treatment of flight attendants discussed above. Additionally, the court emphasized that the union did not have good cause to reject Comair's proposed amendment of the continuous duty line work rules, which would affect only 77 out of approximately 970 flight attendants. The court noted that the proposed revisions were modest – suggesting an increase in minimum hours worked from 22 to 30 for 78 hours of pay. The court found that the union's reason for rejecting the proposal, fear that union members would refuse to ratify an agreement containing it, was an "unsubstantiated premise [that] appears counterintuitive, since the overwhelming majority of flight attendants do not now and never will benefit from the continuous duty line work rules and would presumably prefer a work rule modification which partially ameliorates a gross inefficiency in productivity to a pay rate reduction which would affect every member of the Union."

As of the date of publication, Comair had not imposed the new terms and conditions of employment, as permitted by the court's decision. Unions representing the pilots and mechanics at Comair have indicated they want to renegotiate their concessionary agreements, because those concessions were based on Comair obtaining the $8.9 million in concessions the court rejected in its April 2006 order. •

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