

Court Denies Comair Request To Void Flight Attendant Contract

A federal bankruptcy court has ordered Comair and its flight attendants to resume negotiations, denying the company's petition to void the contract and impose concessions. The decision prevented a walkout by the flight attendants, who had threatened to strike if their contract was abrogated. The International Brotherhood of Teamsters (IBT) represents the carrier's 970 cabin crew. The carrier filed for Chapter 11 bankruptcy in September 2005

along with its parent company, Delta Airlines. Following months of restructuring negotiations, Comair requested court permission to abrogate the IBT pact, saying the union "had refused . . . meaningful concessions."

In his decision, Judge Adlai Hardin found that Comair failed to meet the legal requirements to void the contract. He pointed to the airline's demand for concessions worth \$8.9 million as a "take it or leave

it" proposal instead of "good faith" bargaining. The judge also found that Comair's cost savings goal would place a disproportionate burden on the inflight employees. While the targeted concessions represent 21 percent of the total savings in the airline's restructuring plan, the judge noted that the flight attendant group comprised only 10.5 percent of the payroll. By contrast, the value of give-backs accepted by the carrier's pilots and mechanics more closely matched

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Delta Pilots To Vote On Restructuring Pact

Delta and its 6,000 pilots, represented by the Air Line Pilots Association (ALPA) reached a tentative restructuring agreement on April 14, 2006 -- one day before a panel of arbitrators was set to rule on whether the contract should be abrogated. ALPA leadership voted overwhelmingly in favor of submitting the agreement to the membership for a vote scheduled to be completed by the end of May. Should the pilots fail to ratify the tentative agreement by May 31st, the arbitration panel will rule on voiding the contract by June 14th. Pending union ratification and bankruptcy court approval,

the pact will become effective June 1st and will become amendable December 31, 2009.

The agreement provides annual savings of approximately \$280 million, and "the competitive framework necessary for the company's successful reorganization" in 2007, according to a company spokesman. The parties agreed to a pay cut, relaxed scope provisions, and reduced paid time off, and set the stage for terminating the defined benefit plan. Hours of service and scheduling provisions remain essentially unchanged. The tentative pact also includes

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Court Orders Arbitration of Safety Representative Dispute

A federal appeals court has affirmed the exclusive jurisdiction of adjustment boards to resolve minor disputes over “interpretation or application” of labor agreements in the railroad and airline industries, including disputes involving union representatives selected for non-collective bargaining purposes. (*International Brotherhood of Teamsters, AFL-CIO and Teamsters Local Union 2727 v. United Parcel Service Co.*, No. 05-5478, 2006 WL 1083604 (6th Cir., 4/26/06.)

The dispute originated with the claim of the International Brotherhood of Teamsters (IBT) regarding its right to designate a representative on the joint safety committee under its nation-wide contract with the United Parcel Service (UPS). The company employs IBT-represented maintenance workers at 88 “gateways” or hubs. The contract calls for a labor-management safety committee at each of the company’s larger gateways.



In April 2003, IBT Local 2727 hired John J. Tulipana, Jr. to serve as its Safety Committee Chair as well as the Union Chair of the Louisville Gateway Safety Committee. UPS refused to acknowledge Tulipana as chair of the Louisville committee, contending that the labor agreement required a UPS employee to hold that position. The union sued, claiming that UPS had interfered with its employees’ choice of representative in violation of the Railway Labor Act (RLA). The district court dismissed the suit for lack of jurisdiction, ruling that the dispute qualified as “minor” under the RLA and fell under the jurisdiction of the system board of adjustment.

The IBT appealed, claiming that the dispute was not “minor” because it involved a dispute about the designation of representatives. The union based its claim on Section 2, Third of the Railway Labor Act (RLA) that protects the parties’ rights to choose their own representatives, and provides that representatives of employees need not be employed by the carrier. The IBT argued that UPS violated the RLA by refusing to recognize Tulipana as the union’s representative, and that federal courts retain jurisdiction over this violation.

The appeals court affirmed the lower court’s ruling by finding that the dispute qualified as “minor,” and by rejecting the union’s claim regarding the designation of representatives. The court explained that the appropriate resolution of a dispute under the RLA depends upon the character of the dispute, and that “minor” disputes must be resolved by system boards of adjustment. The decision noted that the RLA defines a dispute as minor so long as the employer asserts a contractual right to take the contested action. The UPS-IBT contract “clearly refers to [the] individuals being on or chairing the safety committees as being employees. Mr. Tulipana does not meet this criteria,” the court pointed out. Therefore the collective bargaining agreement “arguably justified” the company’s interpretation, the court explained.

Turning to the union’s representation claim, the court observed that Section 2, Third protects the rights of employees to choose a representative for the sole purpose of collective bargaining. Tulipana – employed as a safety committee agent – does not qualify as a representative under the RLA. Further, although federal courts theoretically may have jurisdiction over representation disputes where there is evidence of anti-union animus or intimidation, the IBT has presented no evidence of such behavior by UPS in this case, the court explained. ■

Court Finds Delta Fiduciaries Upheld Duties

A federal judge has dismissed charges brought against fiduciaries of Delta Airlines' defined contribution pension plan. The court found the administrative and investment committees did not breach fiduciary duties by using Delta stock as an investment option and for making matching contributions, despite the stock's precipitous decline over four years. (*Smith v. Delta Air Lines Inc.*, N.D. Ga., No. 1:04-CV-2592-ODE, 3/31/06). Judge Orinda D. Evans ruled that the plan did not permit the fiduciaries to remove Delta stock as an investment option or to diversify the stock ownership component of the plan. The court also found the plaintiff failed to prove that Delta stock was an imprudent investment.

The airline's defined contribution plan consisted of two investment components. The first component, "choice-of-investment", enabled employees to direct a percentage of their salary to various investment funds including the Delta Common Stock Fund, to which participants could allocate up to half of their contributions. For the second component, for every dollar that a participant contributed to an investment fund, the airline matched 50 cents worth of Delta convertible preferred stock into an ESOP account. The carrier contributed its stock to the ESOP valued up to 2 percent of the participants' salaries. Participants were restricted from selling the Delta stock in their ESOP accounts prior to age 55 with 20 years of service.

Following the appointment of an independent fiduciary in September 2004, the unencumbered Delta common shares in the ESOP were sold, with proceeds placed into a money market fund in the plan's choice-of-investment component. The fiduciary also restricted participants from putting new money into the Delta stock fund and advised them to sell their interest in that fund. One year later, the airline filed for bankruptcy.

Plan participant Dennis Smith filed a class action suit against Delta and the plan's fiduciaries in September 2004, alleging breach of fiduciary duties by imprudently offering the Delta stock fund as an investment option, by failing to warn participants of the risks of investing in Delta stock, and by using Delta stock for the matching contribution to the ESOP. The plaintiff charged that the value of Delta common stock declined by 92 percent between September 2000 to September 2004 and the defendants knew of Delta's financial struggles and the declining value of Delta's stock.

In dismissing Smith's charges, the court found that the plan provided the fiduciaries no discretion to discontinue investment into the Delta stock fund or to modify the ESOP. Following a "strict construction" of the Employee Retirement Income Security Act (ERISA), the court determined that Section 404(a)(2) exempts ESOPs from the duty to diversify. The judge agreed that the value of Delta's stock declined steeply during the relevant period, but found no evidence that the fiduciaries knew of the airline's "impending collapse" while they invested in Delta stock. ■

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those groups' share of total payroll. Finally, the judge pointed out that the unfair financial burden on the inflight group is compounded by "the fact that the flight attendants are at or near the lowest pay scale of all Comair employees...."

The decision jeopardizes the survival of the airline, announced Comair President Fred Butrell. "Without an agreement from our flight attendants, our restructuring plan and flying operation are likely to fail," he noted. The company has not yet realized

savings from the January concession agreements with pilots and mechanics because implementation of those pacts is contingent upon a restructured flight attendant contract. The parties plan to return to the bargaining table by mid-May. ■

▶ *Delta Pilots* - Continued from page 1

substantial number of *quid pro quos* in return for the concessions. Summary highlights follow:

Compensation and Expenses. Pay rates are reduced 14 percent below those in effect December 14, 2004. Pilots will receive a pay increase of 1.5 percent effective January 1, 2007. Effective January 1st of 2008 and 2009, pay rates will rise by at least 1.5 percent, and may increase by up to 6 percent based upon Delta's financial performance. Pilots will receive another 1 percent pay hike on December 31, 2009. Several temporary concessions effective in December 2005 were made permanent, including cuts to per diem and the international premium, and the elimination of the night differential.

Paid Time Off. The parties reduced the maximum sick leave bank to 240 hours, and trimmed sick pay. On a rolling 3-year basis, a pilot on sick leave will receive full pay for the first 240 hours, and 75 percent pay for the remaining sick days. Effective April 2007, hourly vacation pay will drop to 3 hours from 3.25 hours. Vacation leave will accrue at a reduced rate and the maximum annual vacation will be capped at 5 weeks instead of 6 weeks.

Scope. The tentative pact eliminates minimum block hours and the requirement for mainline operations to comprise a minimum percentage

of total company flying. Also deleted was the obligation to recall all furloughed pilots by August 2008. Provisions for commuter flying of 70-seat jets were relaxed. Beginning in 2007, Delta Connection carriers will be allowed to operate 76-seat jets, with strict limits on numbers and incentives for mainline fleet growth.

Retirement and Insurance. ALPA agreed not to oppose the termination of the defined benefit plan, the Bridge Plan, and the Supplemental Annuity Plan. Delta will contribute 9 percent of earnings to the defined contribution plan and will maintain the 2 percent matching contribution to the 401(k) plan. The parties will implement Roth 401(k) accounts and permit contributions up to the IRS limits. Future retirees will pay higher premiums for medical and dental coverage prior to Medicare eligibility.

Returns. The agreement provides ALPA an unsecured bankruptcy claim of \$2.1 billion. The claim will likely be paid as equity in the reorganized company, with the stock value dependent upon the worth of the company when it leaves bankruptcy and the size of the claim pool. Upon the termination of the defined benefit plan, pilot group will receive \$650 million note or cash, with allocation determined by ALPA leadership. ■

News Briefs . . .

NEGOTIATIONS....Flight attendants at **Alaska Airlines** have approved a new 4-year contract that provides an immediate 3 percent pay raise, caps medical premiums and limits outsourcing....**Gulfstream** and their pilots have reached a tentative agreement on a 3-year pact that would raise base pay by 9 – 12 percent and establish a new 401(k) plan....**REPRESENTATION**...The IAM has filed a petition with the NMB to represent ramp agents at **JetBlue**. Presently all 10,000 employees at the airline are non-union....The NMB has extended the IAM's certification to the entire class of maintenance training specialists on the merged **US Airways** system. The Board also has determined that the merged US Airways – America West operate as a single transportation system for the purpose of representing passenger service agents, clearing the way for the Customer Service Employee Association (CSEA) to be certified as the representative of the agents system-wide. Finally, the NMB has authorized an election between the IAM and TWU to determine the bargaining representative for fleet service employees at the merged airline....**RESTRUCTURING**....**Northwest** pilots have approved their 5 ½-year restructuring agreement by a 63 percent margin.... **MISCELLANEOUS**....The PBGC has taken over three pension plans of **Aloha Airlines**, assuming a liability of \$117 million. The agency assumed the defined benefit plans covering pilots, IAM-represented workers, and non-union employees; the airline will continue to sponsor the dispatchers' pension plan.... **Continental** has tapped **Chautauqua Airlines** to fly 69 ERJ-145s currently subleased and operated by **ExpressJet** as Continental Express. By September 30th ExpressJet must either cancel the subleases and return the equipment to Continental, or pay higher lease fees to keep the aircraft for flying outside CO Express. Chautauqua would operate the planes as CO Express at EWR and CLE.... Virginia workers affected by the closure of **Independence Air** will receive job training thanks to a \$1 million grant from the US Labor Department and administered by Virginia. The funds will provide upgrade training for terminated Independence workers, including B-737 certifications for former pilots....A federal appeals court has dismissed a suit brought by **US Airways** pilots against the PBGC because the plaintiffs had not exhausted administrative remedies. The pilots alleged that pension benefits were miscalculated after the agency took over their defined benefit plan in March 2003. ■

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