Labor Relations Advisor

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Northwest Reaches Concession Deals With Its Unions

Northwest Airlines has filed a Section 1113(c) motion with the United States Bankruptcy Court, seeking approval to void its labor agreements and to impose concessions if restructuring negotiations fail to achieve competitive contracts (*In re Northwest Airlines Corp*., Bankr. S.C. N.Y., No. 05-17930, motion filed 10/12/05). The airline filed for Chapter 11 bankruptcy September 14, 2005 (*Labor Relations Advisor*, September 2005).

Northwest says it needs total labor cost savings of $1.4 billion per year to emerge from bankruptcy. The target includes $285 million in annual savings realized from an earlier concession agreement with pilots, pay reductions for salaried and management employees in December 2004, and $200 million in annual reductions from its restructured maintenance function. To jumpstart the reorganizing process, the airline plans a second round of compensation cuts for salaried and management employees. The company may also seek an immediate, temporary 5 percent pay cut from all union-represented work groups.

In a related story, the Aircraft Mechanics Fraternal Association (AMFA) has canceled a membership vote on the company's contract offer to end the strike that began in August 2005. AMFA officials objected to a "scab clause" in the tentative back-to-work agreement, saying that it violated the union constitution. The clause would have protected from union retaliation approximately 70 AMFA members who have crossed the picket line. Following the vote cancellation, the company resumed hiring permanent replacement technicians. Northwest has nearly completed its plan to replace the 3,600 strikers with 880 mechanics -- comprised of new hires and AMFA members who crossed the picket line. The company has filled the balance of its maintenance requirements through outsourcing. ■

Court Upholds United's Termination Of AFA Pension Plan

A federal appeals court has affirmed a settlement agreement between United Airlines and the Pension Benefit Guaranty Corporation (PBGC) to terminate the flight attendant pension plan and to transfer the plan's liabilities to the pension agency (*In re UAL Corp.,* 7th Cir., No. 05-3200, 11/1/05). The court found "no reason to disturb the bankruptcy court's approval of the United-PBGC settlement agreement." The ruling also affirmed a decision by the United States District Court for the Northern District of Illinois, which upheld the bankruptcy court's decision to approve the pension plan's termination and transfer (*Labor Relations Advisor,* July 2005).

On appeal, the Association of Flight Attendants (AFA) argued that the settlement agreement had unilaterally modified the union's collective bargaining agreement in violation of the Railway Labor Act and the Employee Retirement Income Security Act (ERISA). The court determined determined that the pension settlement deal was proper under both laws. Despite the setback, AFA will have yet another day in court. In a final legal challenge, the union has a suit pending against the PBGC in the U.S. District Court for the District of Columbia.

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IN THIS ISSUE

UAL ESOP Trustee Upheld Fiduciary Duties, Court Rules

A federal judge has ruled that the trustee of UAL Corp.'s employee stock ownership plan did not violate its fiduciary duty by retaining company stock that plummeted in value during the industry's financial crisis beginning in late 2001 [*Summers v. UAL Corp. ESOP Committee*, N.D. Ill., No. 03 C 1537, 10/12/05]. Judge Samuel Der-Yeghianyan granted summary judgment to the trustee, State Street Bank & Trust, finding that plan documents required the trustee to invest funds in stock of UAL, the parent of United Airlines.

In 1994, United's pilots, mechanics, and salaried employees provided concessions valued at $5 billion over six years in exchange for 55 percent ownership of the company through an Employee Stock Ownership Plan (ESOP). The ESOP was directed by a committee of six employees appointed by the IAM, ALPA, and UAL. The stock appreciated in value during the late 1990s, but in 2001 the stock's value took a steep nosedive. In August 2002 – the same month that UAL announced that it might file for bankruptcy -- State Street assumed the duties of investment manager and trustee of the ESOP. The following month State Street began selling the ESOP's holdings of UAL stock. The company filed for bankruptcy in December, 2002. The ESOP was terminated in July 2003, and the remaining assets were distributed to the participants (*Labor Relations Advisor*, July 2003).

In February 2003, the 70,000 ESOP plan participants sued State Street, the ESOP committee, and individual committee members, alleging that the plan lost $2 billion because the UAL stock had lost so much of its value. In August 2005, the ESOP committee and the plan participants agreed to a $5.25 million settlement.

To support their claim that the ESOP should have begun to sell UAL stock in Autumn 2001, the plaintiffs cited an October 2001 letter from the corporation's chief executive officer in which he stated that the company would "perish some time next year" without labor restructuring and loans. The court found nothing in the letter to indicate the company's imminent financial collapse. In fact, the court found "ample evidence" that UAL was not on the verge of financial collapse at that time.

Ruling against the participants, Judge Der-Yehgiayan explained that "State Street was required by the Plan documents to invest the Plan funds in UAL stock." The Judge found that the directed trustee had no duty to serve as an investment advisor to the ESOP committee, and could "only be held accountable when failing to act upon reliable and trustworthy information." The judge pointed out, "If State Street had chosen to sell the UAL stock sooner [than it did] and that decision proved to be premature, State Street would have breached its fiduciary duty to follow the directions of the Plan. " Der-Yeghiayan also excluded the testimony of the participants' expert witness, Lucian Morrison, a professional fiduciary and a manager of banking and trust activities. The court found Morrison "wholly deficient to offer expert testimony" regarding bankruptcy and related matters. ■

United's Termination - *Continued from page 1*

The AFA pension plan covers 19,000 current and retired flight attendants. Although the United-PBGC settlement agreement terminated four pension plans covering all of the company's employees, only AFA has battled the deal in court. ■

Flight Attendants Affirm Seniority Merger Policy

An agreement between AFA-represented flight attendant groups at the former US Airways (US) and America West Airlines (AWA) has resolved a controversy surrounding seniority integration of the two groups. The intra-union battle has raged since the airline merger was announced several months ago. US and AWA attendants have agreed to merge their seniority lists based upon their dates of hire, following a policy long-established by AFA.

Flight attendants from US Airways have much greater seniority than their counterparts at America West, which was founded in 1983. AWA flight attendants fear being "bumped" from their jobs when more senior US crews are recalled from furlough. At the AFA annual Board of Directors meeting October 20, 2005, AWA flight attendants proposed changes to the union merger policy to allow seniority integration at merged airlines to be based on procedures other than date of hire. The proposed agenda item would have been effective retroactive to January 1, 2005. Before the Board could vote on the proposal, however, AWA and US union leaders reached a written agreement to reaffirm AFA's date-of-hire policy and to "negotiate solutions to the outstanding issues surrounding this merger." AFA President Patricia Friend has signed the agreement. ■

Polar Pilots Approve Contract, End Strike

Pilots at Polar Air Cargo ratified a new contract on October 5, 2005, ending a two-week strike against the carrier. (*Labor Relations Advisor*, September 2005). The crew members are represented by the Air Line Pilots Association (ALPA). The agreement will become amendable March 31, 2007. Polar is owned by Atlas Air Worldwide Holdings. Next year the parent company plans to merge Polar with Atlas Air, another subsidiary.

The 18-month contract provides for a 10.5 percent pay increase retroactive to June 1, 2005. Captains at the top of the pay scale will earn $153.76 per hour, while first officers and flight engineers will receive a top pay rate of $106.66 per hour. Pilots currently on the seniority list will also receive a lump sum payment of 4 percent of earnings from June 2005 through May 2006.

The agreement also provides for an increase in the matching contribution to the 401(k) plan. Beginning in 2006, Polar will contribute 50 percent of a pilot's pre-tax contribution up to a maximum of 10 percent of the crewmember's compensation. Under the prior contract, the company's matching contribution was capped at 2 percent of compensation.

"Ratification of this contract by our Polar crewmembers sets the stage for the merger of our two crew workforces under one contract in 2006," commented Jeffrey H. Erickson, President and CEO of the holding company. ■

American Eagle Flight Attendants Approve Accord

Following four years of negotiations, American Eagle has reached a four-year agreement with its 1,420 flight attendants, represented by the Association of Flight Attendants (AFA). Flight attendants approved the accord by a 57 percent margin on October 27, 2005. The previous contract became amendable September 2, 2002.

The contract provides an immediate increase to the pay scale that had remained unchanged since December 2001. Upon the contract's ratification, flight attendants in the second year of service and above receive immediate pay rate increases averaging 18 percent. Hourly rates for first-year employees remain unchanged. The new hourly pay scale starts at $17.67 and reaches $31.00 in the 13th year. A 1 percent pay increase will occur at the end of the first and second contract years, and notes will rise by another 2 percent at the end of the third contract year. Flight attendants with 13 or more years of service receive a longevity premium of $0.50 per hour that increases to a maximum of $2.00 per hour by the end of the contract. New pay provisions include a line guarantee of 96 percent of the final bid award for attendants who are available for a full month, and holiday pay for Thanksgiving and Christmas. Deadhead pay increased to 75 percent of scheduled block time, and the minimum daily guarantee rose to 3:45, up from 3:30. Employees receive a signing bonus ranging from $500 to $1,500 depending on length of service.

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The agreement also provides for improvements in expense reimbursements. Per diem will increase from $1.30 per hour to $1.55 per hour. The expense allowance will improve each year to $1.70 per hour in the third contract year. A uniform cleaning allowance was established, and company-paid moving expenses were improved.

The pact's amended scheduling provisions and reserve rules are designed to balance improved coverage with increased flexibility for flight attendants. Open time pickup is paid 100 percent above guarantee for lineholders. Relaxed rules will permit unlimited trip trades with open time when the system becomes automated. When the company declares a critical coverage day at a base, a flight attendant who picks up open time at that base will be paid a junior man premium of 150 percent. Minimum days off increased from 10 to 11 days per month.

In a significant improvement to benefits, the pact raised the company's matching contribution to the 401(k) plan. The new contract provides that the airline will match a flight attendant's 401(k) contribution up to 3.25 percent or 4.25 percent of pay, depending upon length of service. Health insurance plans remain unchanged at this time. The agreement provides that if any other labor group improves their health benefits, AFA members will receive the same improvements. ■

News Briefs...

REPRESENTATION…The International Brotherhood of Teamsters (IBT) is seeking to represent customer service employees, ramp workers, and reservation agents at **AirTran.** The National Mediation Board (NMB) has scheduled the representation ballot count on December 20…Dispatcher employees at **Ryan International Airlines** voted for representation by the Transport Workers Union (TWU) on November 2. Out of 8 eligible voters, 7 voted for TWU… **NEGOTIATIONS**…**Delta Airlines** has asked its pilots, represented by the Air Line Pilots Association (ALPA) for an additional $325 million in wage cuts. On November 16 the airline will ask the bankruptcy court to void the ALPA contract if the parties are unable to reach agreement. The company expects to lose $2.16 billion for the year…**FedEx** has asked the National Mediation Board (NMB) to begin mediating pilot negotiations. ALPA and the company have been in negotiations since March 2004…**Horizon** dispatchers, represented by TWU, have approved a new 3-year contract. The company has also reached a tentative 2-year agreement with its maintenance employees, represented by the Airline Mechanics Fraternal Association (AMFA)…**NetJet** flight attendants, represented by the IBT have ratified their first contract...**USA-3000** and the IBT have signed an initial pilot agreement…**BANKRUPTCY**…Flyi Inc., parent of **Independence Air**, filed for bankruptcy protection under Chapter 11 on November 7th. Independence Air has reached tentative restructuring agreements with AMFA and AFA, and continues negotiations with ALPA. The company has also frozen pay for nonunion employees, and enacted a 5 percent pay cut for management and other salaried employees. ■

About J. Glass & Associates

J. Glass & Associates provides consulting services for both unionized and nonunionized employers in a number of industries, including the transportation and manufacturing sectors. They advise companies that are restructuring, and provide strategic guidance in mergers, acquisitions or other transactions. J. Glass & Associates represent management in collective bargaining negotiations. They draft and analyze contract proposals; conduct cost analysis of union and/or company contract proposals; develop cost models to calculate future employment expenses; research and analyze trends in collective bargaining; develop wage, work rule and benefits surveys tailored to meet the needs of management and performs due diligence in mergers and acquisitions. J. Glass & Associates also provides expertise in human resources areas including employment policies, compensation, benefits, recruiting and corporate learning.

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