

The Labor Relations Advisor

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ALPA Switches Sides on Pilot Retirement Age

The leadership of the Air Line Pilots Association (ALPA) has voted to end its support of mandatory retirement for pilots at the age of 60. This announcement reverses longstanding policy of the Association. Until now ALPA has traditionally supported the Federal Aviation Administration's (FAA's) age 60 rule and has worked to block any change in the law. In January 2007, the FAA announced its plan to raise the mandatory pilot retirement age to 65 by following the standard set by the International Civil Aviation Organization (ICAO). The proposed new rule would permit pilots to fly to age 65 as long as one member of a two-person cockpit crew is under age 60 (See *Labor Relations Advisor*, February 2007).

ALPA's Executive Board voted overwhelmingly to change its position after considering the findings of an internal study panel. Going forward, the Association plans to be fully engaged in shaping any rule change in order to safeguard pilot interests.

The union has identified the following priorities to be addressed by any legislative or regulatory changes associated with lifting the retirement age for pilots:

- Oppose requiring a minimum of at least one pilot to be under age 60 in the cockpit during domestic operations. After evaluation of long-term data on pilots over age 60, ALPA will decide its policy on over/under age 60 pilots for non-domestic operations;
- Prevent retroactive application of a new retirement age rule;
- Ensure effective liability protection for airlines and pilot unions in implementing a rule change;
- Protect a pilot's accrued retirement benefits under a defined benefit pension plan;
- Oppose additional age-related diagnostic medical testing;
- Oppose enlarging FAA's access to pilot medical records;
- Require a first class medical certification every six months for pilots above age 60; and
- Protect a pilot's ability to retire without penalty prior to the mandatory age. ■

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Northwest Attendants' Contract Vote Challenged

A former flight attendant union at Northwest Airlines has challenged the Association of Flight Attendants' (AFA's) recent vote approving a new concession agreement. After rejecting two previous tentative pacts in 2006, AFA members approved their latest contract by a 50.9 percent margin in May 2007. A leader of PFAA, the union ousted by AFA, has protested the balloting procedures and demanded a new vote. PFAA's challenge has delayed the attendants' receipt of a \$182 million bankruptcy claim that was secured by the labor agreement. (See *Labor Relations Advisor*, May 2007) ■

United States Appeals Court: Pilot's Reinstatement No Risk to Public Policy

A federal appeals court has upheld an arbitrator's decision to restore the job of a NetJets Aviation pilot who posted a controversial video on the internet (*NetJets Aviation Inc., v. Int'l Bhd. Of Teamsters, Airline Div.*, 6th Cir., No. 06-3851, 5/15/07). In Jason Piper's on-line video, a pilot fired bullets at a company-produced DVD that promoted a tentative labor agreement between the company and the International Brotherhood of Teamsters (IBT), the NetJet pilots' bargaining representative. The appeals court affirmed a lower court's grant of summary judgment to the IBT, and rejected company claims that the pilot's reinstatement violated public policy by posing risks to aviation and workplace safety.

The Company and the IBT reached a tentative labor agreement in August 2004. In an effort to urge pilots to ratify the pact, the airline produced a DVD in which the company's president and chairman described the agreement. NetJets sent the DVD – *The Contract is the Foundation for Everyone's Success* – to the company's 2,000 pilots.

Piper, who chaired the union communications committee and opposed ratification of the agreement, responded to the company's action with a video of his own. The pilot produced a half-minute video and posted a link to it on the union's website. Piper's video starts with a close-up view of the cover of NetJet's DVD, and then shows a pilot firing a semiautomatic rifle at the company's DVD. The scene ends with the words "Anyone care to guess how I voted?" Following up on a complaint, the company investigated the incident and fired Piper for "inducing fears of workplace violence."

The IBT grieved the termination. The arbitrator found that Piper acted in an immature manner, but rejected company arguments that the video depicted the symbolic murder of company officials. NetJets had "overreacted," according to the arbitrator, since the pilot's DVD was published on the union's website as part of an internal debate on the tentative contract. The ruling also noted that the company's action was excessive and inconsistent with past practice. Piper was reinstated without back pay and barred from using the union website for a year.

When NetJets sued the Teamsters to vacate the arbitration award, the district court granted summary judgment to the union. The court ruled that the Railway Labor Act prohibits courts from performing public policy reviews of arbitration awards.

The Sixth Circuit did not decide whether the Railway Labor Act permits court review of public policy implications of arbitration awards. However, Judge John M. Rogers noted that it was unnecessary to decide the issue because the arbitrator found no evidence to support NetJet's claims that reinstating Piper violates public policies that promote safety. ■

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USPS to Resolve Impasses With Two Unions Through Arbitration

The United States Postal Service (USPS) is preparing to resolve bargaining impasses with the National Association of Letter Carriers (NALC) and the National Rural Letter Carriers Association (NLRCA). Talks with the NALC broke off in late 2006 and bargaining with the NLRCA halted in June 2007. (See *Labor Relations Advisor*, January 2007 and February 2007.) The USPS and the NALC will commence four weeks of binding interest arbitration in September 2007, with Richard Bloch serving as the neutral arbitrator. A final award is expected in November. The USPS and the NLRCA expect to enter a conflict resolution process that could lead to binding arbitration, although no timetable has been set. The NALC represents approximately 225,000 urban letter carriers; the NLRCA represents approximately 118,000 workers.

In February 2007, NLRCA members rejected a tentative four-year contract that was reached last December. Major issues in the dispute include pay, cost of living adjustments (COLAs),

health benefits, allowances for equipment maintenance, sick leave accrual, and time standards. The union proposals included a 4-year contract with wage increases of 3 percent in the first year and 2.5 percent in each of the remaining years. The NLRCA also sought to maintain the COLAs, to preserve the current health plan premiums and sick leave accrual, and to increase the equipment maintenance allowances. In contrast, the USPS sought a new pay structure that would peg wage increases to the cost of living in the employees' locality. The agency also proposed a two-year contract that would eliminate the COLAs, raise employee premiums for health benefits, reduce sick leave accrual, and change the system of time standards for mail delivery.

The USPS has settled ratified agreements with the American Postal Workers Union, representing approximately 272,000 workers, and the National Postal Mail Handlers Union, representing 55,000 employees. The agency began separate negotiations with all its unions in August 2006. ■

NLRB Elections Decline, Union Wins Hold Steady

Last year marked the eleventh straight year of declines in the number of union representation elections conducted by the National Labor Relations Board (NLRB). The agency supervised 1,648 elections in 2006, compared to 3,300 elections in 1996. Although recent years have seen a drop in the number of NLRB elections, the percentage of those elections won by labor organizations – the union “win rate” – has remained above 50 percent for the past decade. Unions won 61.5 percent of the NLRB elections in 2006.

Unions affiliated with the AFL-CIO won 60 percent of their elections in 2006, slightly higher than the 57 percent win rate for organizations comprising Change to Win. In terms of individual unions, the Service Employees International Union (SEIU) achieved the highest win rate by claiming victory in 72.9 percent of its NLRB elections in 2006. The International Association of Machinists (IAM) was just behind them by winning 70.1 percent of the elections. Other unions ranked in order of their 2006 win rates were the International Brotherhood of Electrical Workers (67.3 percent), the International Union of Operating Engineers (IUOE) (63.9 percent), and the Laborers Union (60.3 percent).

Labor organizations gained representation rights through NLRB elections for a total of 61,700 workers in 2006, compared to 65,200 in 2005. The single union organizing the largest number of workers last year was the SEIU, winning elections for 15,130 employees. Trailing in second place was the International Brotherhood of Teamsters (IBT), gaining new representation for 8,146 workers.

The most frequent union participant in NLRB elections last year was the IBT, involved in 425 cases. The SEIU was the second most frequent union participant, taking part in 166 elections. Rounding out the top five unions in order of the number of NLRB elections last year were the IAM (127 elections), the United Food and Commercial Workers (117 elections), and the IUOE (108 elections). ■

NEWS BRIEFS...

HCA, SEIU Settle Florida Hospital Contracts

Hospital Corporation of America (HCA) and the Service Employees International Union (SEIU) have settled initial contracts covering 4,000 workers at six Florida hospitals. Union members ratified the four-year agreements in early June. Statewide bargaining achieved many of the provisions, such as grievance and arbitration procedures, management rights, successorship, and job security. The parties also reached agreement on a state level regarding several principles to be applied on a local basis. These issues include replacing merit pay systems with across-the-board wage increases, and establishing retention adjustments based on local labor markets.

Local bargaining resulted in addressing topics such as wage rates, vacation, meals, and rest periods. Although pay rates vary by hospital, each contract provides 3 percent increases each June with additional allowances provided for retention and recruitment purposes. Additional adjustments are aimed at lifting the wages of low-paid workers, such as dietary employees and patient care assistants.

Unions Late Filing LM-2s May Face Legal Action

Labor unions delinquent in filing financial disclosure reports may face legal action by the Department of Labor. Approximately 1,275 unions are more than a year late in filing LM-2 Labor Organization Annual Reports as required by the Labor-Management Reporting and Disclosure Act (LMRDA). This law requires labor organizations with minimum total annual receipts of \$250,000 to file the LM-2 report within 90 days after the end of the fiscal year. The delinquent unions have failed to submit their reports for fiscal years ending in 2005, for which the deadline was March 31, 2006.

As its first step in enforcement, the DOL Office of Labor-Management Standards plans to send warning letters to the delinquent unions, which include 118 of the country's largest labor organizations. Thirty days later, the agency's website will post the names of the unions that remain noncompliant (<http://www.olms.dol.gov>). Additional legal action may include civil or criminal enforcement by U.S. attorneys. The DOL notes that between 30 to 40 percent of unions each year fail to submit their LM-2 reports on time. ■

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Proposed Law Grants FMLA Coverage to Flight Crews

Proposed legislation introduced in the House of Representatives would revise the 1993 Family and Medical Leave Act (FMLA) to accommodate airline flight crews with nontraditional work schedules and pay practices. The present law requires employees to work 60 percent of a full-time schedule, or 1,250 hours over the prior 12 months, to be eligible for FMLA coverage. Critics have noted that current language has the unintended consequence of excluding coverage to flight attendants and pilots, who do not work a traditional 40-hour week.

The Airline Flight Crew Family and Medical Leave Act, sponsored by Rep. Timothy Bishop (D-N.Y.), would permit airline flight crew to receive FMLA coverage if they work 60 percent of a full-time schedule at their airline. This could be measured by the company's minimum monthly pay guarantee, or the equivalent, annualized over the prior 12 months. The guarantee generally is defined as the minimum number of paid hours per month.

The proposed law was introduced in the House on June 14, 2007. The bill number was not available at press time. ■

Supreme Court Refuses to Review Transit Workers' Dispute

The United States Supreme Court has let stand a federal appeals court decision approving the Utah Transit Authority's (UTU) system wide bargaining unit comprised of both bus and light-rail workers (*Burke v. Utah Transit Auth.*, U.S., No. 06-1050, cert. denied 5/14/07). Light-rail workers had petitioned for review of a 2006 ruling of the U.S. Court of Appeals for the Tenth Circuit, which found that the system wide bargaining unit is legal under Utah labor law and the federal Urban Mass Transportation Act (UMTA). The Amalgamated Transit Union (ATU) has represented Salt Lake City transit workers since 1904, when private companies operated city streetcars.

The transit authority has operated buses since 1969. In 1999, when light rail service began, the authority agreed that the union would represent the train workers whose jobs were similar to those of bus employees. The 1998 ATU labor contract also defined a system wide seniority system, providing that bus workers who transferred to the rail unit would retain system seniority. In 2001 the U.S. Department of Labor (DOL) certified the labor agreement in compliance with the UMTA's labor rights requirements.

In late 1999 and early 2000, two bus employees transferred to the light rail division. In 2004 those workers petitioned the UTU for a separate bargaining unit for rail workers; the authority took no action. A new 2004 collective bargaining agreement included a letter of agreement to study seniority issues. In October 2004, the two employees sued the transit authority, the ATU, and DOL charging that the system wide bargaining unit violated labor rights. The plaintiffs complained that bus workers who transferred to the light-rail unit could bid for better shifts by bumping rail workers who held less system seniority, even though the rail employees had worked longer on the trains. Claims against the DOL and the union were dismissed, and the transit authority was granted summary judgment.

On appeal, the Tenth Circuit found the system wide bargaining unit was appropriate under state law. The court explained that a unit in compliance with the UMTA must be valid under state law, because the Utah statute was enacted to comply with the federal rule. The court noted that the bargaining unit had been certified by the DOL, and that bargaining units in most cities contain both kinds of workers. The court found no evidence that employee rights had been violated. ■

United Transportation Union, Sheet Metal Workers Plan Merger

The United Transportation Union (UTU) and the Sheet Metal Workers (SMWIA) have proposed a merger to create a new 230,000-member International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART). UTU currently represents approximately 80,000 active members who work for railroads, bus companies, and mass transit. SMWIA, with 150,000 active members, represents employees in building trades, production work, railroads, and shipyards. Pending ratification by UTU members, the merger will become effective January 1, 2008.

The new union plans to create a transportation division within SMART headed by new UTU officers to be elected at the union's convention this summer. SMART's transportation division would be comprised of members covered by UTU contracts, and, in addition, it would handle national rail bargaining for SMWIA-represented rail employees who do not work in train operations. The UTU constitution will survive as part of the SMART constitution.

The UTU points to several benefits of the proposed merger. For example, SMWIA's strength and expertise will assist the UTU in organizing campaigns planned at shortline railroads, bus companies, and airlines. SMWIA currently funnels 40 percent of dues to organizing efforts, and employs 120 organizers. Access to SMWIA's 186 training facilities and 200 union halls will reduce expenses for UTU local unions. The combined unions also expect to boost their lobbying strength by merging their political action committees (PACs). SMART's combined PAC would create the 7th largest union PAC, and the 21st largest of all 4,000 PACS in the U.S.

Other labor organizations have expressed interest in joining SMART if the merger is finalized. Those unions remain anonymous for now. Both the UTU and the SMWIA are affiliates of the AFL-CIO. ■

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