

# The Labor Relations Advisor

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## Railway Labor Act Supersedes FMLA on Concurrent Leave, Federal Court Rules

Five railroads violated their collective bargaining agreements by requiring employees to use paid leave concurrently with leave under the Family and Medical Leave Act (FMLA), according to a ruling by a United States Court of Appeals. (*Bhd. Of Maint. Of Way Ees. v. CSX Transp. Inc.*, No. 06-2744, 3/2/07). FMLA rules permit – but do not require – the substitution of paid leave for FMLA leave, according to the ruling. The court found that the FMLA does not override pre-existing labor contracts that require parties to negotiate any proposed changes to leave policy. “While substitution is allowed, the carriers cannot require substitution without complying with procedures set out in the RLA [Railway Labor Act],” Judge Terence T. Evans explained.

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## Federal Court Dismisses Pilot Law Suit Against US Airways

A U.S. District Court has dismissed a lawsuit filed by the US Airways pilots, aiming to halt the airline from combining the separate reservations systems of US Airways and the former America West Airlines (*Air Line Pilots Ass’n v. US Airways Inc.*, E.D. Pa., No. 07-822, 3/2/07). The court found that the issue was a minor dispute under the Railway Labor Act, subject to binding arbitration and outside the court’s jurisdiction.

The case arose when US Airways announced its plan to operate all its flights under the single “US” code, eliminating the America West designator code from its reservations system. The pilots, represented by ALPA, claimed that implementing a single reservation system would violate a transition agreement signed following the September 2005 merger of the two carriers. The transition pact requires the airline to maintain separate operations until the parties integrate the two seniority lists and negotiate a single, merged ALPA contract. The union also filed a motion for a temporary restraining order to prevent the combination of the reservations systems.

The airline argued that changing the designator code would have no effect on pilots. Even with a combined reservation system, the carrier’s flying will continue to operate separately as US Airways or America West -- based on aircraft tail numbers and pursuant to respective pre-merger labor agreements -- until a merged pilot agreement is reached, according to the company. Judge Berle M. Schiller denied ALPA’s motion for a temporary restraining order and dismissed the case. ■

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## Retirement Savings Fall Short

Too few workers are preparing for retirement despite the growing need to pump up retirement savings as defined benefit plans dwindle, according to a recent study by the Congressional Research Service (CRS). (*Retirement Savings: How Much Will Workers Have When They Retire?*) Fewer than one-half of working households participated in job-sponsored retirement savings plans in 2004, and less than one out of three working households owned an individual retirement account (IRA), the study found. The CRS based its report on data collected for the Federal Reserve Board’s 2004 Survey of Consumer Finances.

Although participation in job-sponsored retirement plans has remained relatively stable at about one-half the workforce from 1980 to 2003, the predominate type of retirement plan has reversed over that period, according to the report. For example, in 1980 approximately 30 million workers were enrolled in

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## *Railway (continued from page 1)*

To avoid scheduling problems caused by absences, CSX Transportation, Inc., and the four other railroads, generally required employees to take paid leave before taking unpaid leave during their FMLA absences. Employees could choose which form of paid leave to use. The use of FMLA leave at the railroads was governed by policies separate from the railroads' collective bargaining agreements.

Similar lawsuits filed against the railroads by various unions were consolidated into a single case involving the same legal issues. In 2005, the United States District Court for the Northern District of Illinois determined that the RLA requires parties to negotiate any modification to leave policies, and that the railroad companies could not make unilateral changes to those policies.

*“The Seventh Circuit disagreed, finding that the FMLA does not create an exception to the RLA.”*

On appeal, the railroads argued that because the FMLA was a newer, more specific statute, it superseded the rights existing under the more general RLA and the collective bargaining agreements. The Seventh Circuit disagreed, finding that the FMLA does not create an exception to the RLA. Although some statutes can serve as exceptions to the RLA, such as the Title VII of the 1964 Civil Rights Act or the Americans with Disabilities Act, these exceptions exist because the laws create a specific mandate. By contrast, the FMLA provision regarding concurrent leave simply permits an option. ■

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## Coalition Seeks to Reform Health Care

An unlikely partnership of four nationwide corporations and two large labor unions has vowed to reform the country's health care system by 2012. Founders of the "Better Health Care Tomorrow" campaign include executives of Wal-Mart, AT&T, Kelly Services and Intel, along with the presidents of the Service Employees International Union (SEIU) and the Communication Workers of America (CWA). The founders intend to recruit additional coalition members from businesses, unions, nonprofit organizations, and the government.

Although the coalition does not advocate a particular solution, it believes that the current job-based health care system is not working for employers, employees, or the millions of Americans who lack basic health insurance. The group points to the growing financial strain on employers to provide employee health insurance, the difficulty of competing with companies who do not provide benefits, and the bitter labor relations conflicts that stem from health care issues.

The following four "common sense" principles will guide the campaign:

- Every person in America must have quality, affordable health insurance coverage.
- Individuals have a responsibility to maintain and protect their health.
- America must dramatically improve the value it receives for every health care dollar.
- Business, government, and individuals all should contribute to managing and financing a new American health care system.

In its search for a better health care system, the coalition is discussing the issue with congressional leaders, White House officials, and governors, and plans to hold a summit meeting on health care reform this spring. The group may seek to adopt components of health care systems used in state programs, or in other countries. ■

## FedEx Modernizes Its Pension Plans

Responding to recent legislative, regulatory, and demographic changes, FedEx plans to "modernize" the pension plan covering most of its employees. The company expects to spend about the same amount per employee under the new plan. The company also plans to enhance its 401(k) plan by increasing its matching contributions for most employees and by providing automatic enrollment and additional investment options.

The traditional defined benefit plan now covering approximately 170,000 employees will be replaced by a cash balance formula effective June 1, 2008. FedEx will fully fund the new "Portable Pension Account," and will provide transition credits from the existing system. Benefits accrued under the old plan as of May 31, 2008 will be capped and will be payable at retirement. While the current pension plan is not portable, the new plan will permit employees to take vested benefits with them if they leave the company. Employees will be vested after 3 years, compared to 5 years under the current system. The change will not affect overseas workers and retirees, or the company's pilots, who are covered by a collective bargaining agreement.

FedEx pointed to several reasons for the new system. The company expects to benefit from long-term "smoothing" of its pension funding, avoiding volatility introduced by recently adopted and proposed changes to accounting rules. The new Pension Protection Act permits the company to enhance its 401(k) plans and to expand the number of workers covered by its Portable Pension Account, a cash balance feature that FedEx introduced in 2003. The company also points to shifting demographic trends resulting in greater life expectancies among retirees, and their desire for greater control, portability and inheritability of retirement benefits. ■

## NEWS BRIEFS...

**NEGOTIATIONS...** Frontier pilots, represented by the Frontier Airlines Pilots Association, have approved their tentative contract by a 67 percent margin. Effective March 1st, the 4-year "cost-neutral" pact freezes pay for a year for most of the current cockpit crew, and provides lower pay scales for new-hires... **Continental** flight attendants have voted to continue participation in the company's defined benefit retirement plan instead of switching to the IAM National Pension Plan. In the event of the future termination or freeze of the Continental plan, attendants will automatically move to the union plan... **Pinnacle** flight attendants have approved a new four-year agreement by a 62 percent margin... **PAY PLANS...** Delta will provide a new compensation package for nonunion employees this summer, following the company's planned exit from Chapter 11 bankruptcy this spring. The promised pay raises, profit sharing, stock awards,

and new retirement savings plan will be airline's first step towards a pay structure competitive with network and low-cost carriers... **U.S. federal employees and uniformed military personnel** will receive 3 percent average pay increases in fiscal 2008 under President Bush's new budget proposal. The proposal would also reduce the government's portion of the health insurance premium for retirees with fewer than 10 years of service. Uncle Sam currently pays approximately 72 percent of health care premiums for federal employees and retirees... **PILOT RETIREMENT...** A bill introduced by the House Transportation Committee would raise the mandatory retirement age for pilots to 65 from 60 years within 30 days of passage, avoiding FAA's lengthy rule-making process that could take up to two years to change the age-60 rule. (*Labor Relations Advisor*, February 2007) The bill also would prohibit pilots forced to retire before the law is enacted from suing their airlines or unions to restore their jobs or seniority. ■

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### Retirement Savings *(continued from page 1)*

defined benefit (DB) plans while defined contribution (DC) plans accounted for almost 19 million participants. By contrast, in 2003 roughly 21.3 million employees participated in DB plans, while DC programs had enrolled more than twice that number – approximately 51.8 million workers. Now almost 80 percent of all private-sector workers are not covered by a defined benefit plan.

According to the report, the trend away from DB plans to DC programs requires employees to bear more responsibility to save for retirement. Workers will need either to save more or to work longer in order to maintain their living standards in retirement. However, the CRS report also suggests that the typical amount of retirement savings falls far short of what people will need to maintain a comfortable retirement. For example, a married couple with a head of household between 45 and 54 years old had accumulated median retirement assets of \$103,200 in 2004. A single person between 45 and 54 years old owned a median retirement balance of only \$32,000.

To boost employee retirement savings, recent amendments to the Pension Protection Act encourage companies to adopt automatic enrollment in retirement plans, and make permanent the retirement savings tax credit. The CRS report noted other proposals aimed at stimulating retirement savings. These include promoting payroll deductions for IRAs, exempting amounts in retirement savings plans from means tests for federal aid programs, and providing tax credits to employers who maintain certain retirement savings plans. Others have recommended giving incentives for employees who purchase life annuities, and requiring companies that offer DC plans to provide retirees the opportunity to purchase employer-sponsored annuities. ■

## IBT, Yucaipa Reach Tentative Deal At Allied

The International Brotherhood of Teamsters (IBT) and Yucaipa Cos., a major creditor of bankrupt car-hauling company Allied Holdings, have reached a tentative labor agreement just 11 days after Allied petitioned to reject the Teamsters' contract. The IBT pact with Yucaipa comprises part of the investment firm's 3-year reorganization plan for Allied.

Implementation of the labor agreement is contingent upon acceptance by Allied's Board of Directors, approval of the bankruptcy court, and ratification by the union's 3,300 drivers. Meanwhile, Allied's motion to void the labor agreement has been suspended indefinitely. Allied filed for Chapter 11 bankruptcy in July 2005.

The Yucaipa pact would provide an agreement more beneficial to the 3,300 drivers than the concessions originally sought by Allied. The car haul company had planned to impose cuts in wages, benefits, and workrules totaling \$65 million per year for 5 years. By contrast, the Yucaipa deal cuts wages by only \$35 million a year for 3 years, preserves work rules, and requires the employer to make full contributions for health, welfare and pension plans. Savings from the concessions must be earmarked to purchase new equipment to be used by the drivers. The agreement requires shared sacrifice by Allied management and non-bargaining unit employees, whose wages would be frozen for the same period as the IBT-represented employees. Company profits exceeding specified targets during the contract term would be paid to union members. The tentative agreement requires Allied to rejoin the IBT car haul master contract and prohibits the firm from using savings from the concessions to compete against other signatories to the master agreement. The deal also requires that Allied appoint a new CEO acceptable to the Teamsters. ■

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## Comair Pilots Approve Concession Pact

Comair pilots, represented by the Air Line Pilots Association (ALPA) approved a restructuring agreement on March 2, 2007, narrowly averting the company's imposition of a concession package. The settlement followed six months of intense negotiations that extended past several deadlines. The four-year pact saves \$40 million over the course of the agreement and paves the way for the company's planned emergence from Chapter 11 bankruptcy this spring. The new agreement became effective upon ratification, and will become amendable on March 1, 2011.

The parties agreed to reduce captains' hourly pay rates by 7.7 percent on the 40- to 50-seat jets, and by 12.5 percent on 70-seat jets. New pay scales for 71- to 76-seat equipment were established. The contract provides pay increases of 1.5 percent in each of the next three years, eliminating pay increases provided by earlier contracts. Deadhead pay credit was reduced to 75 percent from 100 percent.

Health and welfare plans were also revised. Health benefits remain unchanged, although pilot premiums may increase by up to 10 percent each year. Deductibles, out-of-pocket amounts, and co-payments will rise in tandem with CPI increases each year. The agreement modified the 401(k) plan to provide a

company match of 40 percent or 60 percent of a pilot's first five-percent contribution, depending on longevity. This compares to a 50 percent match for all pilots under the previous agreement. The company match will improve effective January 2011.

Other reductions include trimming per diem to \$1.55 per hour, and reducing vacation pay and accrual. In 2011 the expense allowance will revert to \$1.75 per hour and vacation accrual will snap back to previous levels. The contract provides pilots a new option of cashing out a portion of accrued vacation. The parties eliminated the uniform maintenance allowance and revised the reserve system. As a quid pro quo, a new profit sharing plan will provide maximum net payouts of 4 percent of earnings for 2007, 5 percent for 2008, and 6 percent for 2009 and thereafter. Comair also committed to maintain at least twelve 70-seat jets, and agreed to other minimum fleet provisions.

An earlier ALPA restructuring agreement ratified in January 2006 was never implemented because it was contingent upon the company reaching concession contracts with the other union-represented groups. When the flight attendants agreed to more modest concessions than originally planned, Comair and the pilots were required to renegotiate the pilots' earlier restructuring pact. ■

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