

The Labor Relations Advisor

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Wyoming Supreme Court Confirms Enforcement of Pilot Training Contract

The Wyoming Supreme Court has found that an airline's breach of contract claim regarding a pilot's training contract required interpretation of a collective bargaining agreement, a matter within the exclusive jurisdiction of an arbitrator (*Daniel M. Pittard v. Great Lakes Aviation*, No. 05-230, Supreme Court of Wyoming). The state Supreme Court determined that a district court should have stayed the state action until the arbitrator had issued a ruling on the grievance, but that error was harmless given the arbitrator's subsequent ruling that the training agreement did not violate the collective bargaining agreement. The decision clears the way for the airline to enforce the pilot training contract.

(Continued on page 2)

Six Rail Unions Approve Metro-North Pacts

Following more than four years of negotiations, six of the eight unions in the labor coalition at Metro-North Railroad have approved new contracts that provide wage increases and benefit improvements. Two remaining unions have not yet finalized agreements. Metro-North is a subsidiary of the New York State Metropolitan Transportation Authority.

Under the new agreements, workers receive a \$1,000 bonus for 2003, and 3 percent pay increases retroactive to January 1, 2004, 2005, and 2006. The pacts also provide a 4 percent pay boost effective January 1, 2007. Employees will receive deferred increases of 3.5 percent January 1, 2008, and 3 percent January 1, 2009. Benefits include company-paid health insurance, and a defined benefit pension plan with employee contributions capped at 3 percent.

Seven of the labor coalition members reached tentative agreements on March 30th. The six unions that have ratified the pacts include the Transportation Communications Union (TCU), the International Association of Machinists (IAM), the International Brotherhood of Electrical Workers (IBEW), the Transport Workers Union (TWU), the American Railway & Airway Supervisors Association, and the National Conference of Firemen and Oilers. Members of the seventh union - the Sheet Metal Workers - narrowly rejected the tentative contract. The eighth coalition member, the International Brotherhood of Teamsters, has not yet reached a tentative pact. The Teamsters cite wage parity with the Long Island Railroad as the major issue in the negotiations. A second presidential emergency board has completed its hearings and a decision is expected shortly. ■

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Northwest Retirees to Receive Health Benefits

Northwest will continue to offer retiree healthcare benefits under terms of an agreement filed with the United States Bankruptcy Court. The airline and the §114 Retiree Committee agreed that retirees under age 65 who retired prior to August 2006 may receive medical, drug, and dental benefits as part of the health plan offered to active employees. Retirees will contribute half the cost of the medical coverage and will pay the full cost for dental benefits. Current Northwest retirees aged 65 or older and who are now enrolled in a company-sponsored medical plan may continue participation through the plan offered to retirees who are younger than 65 years.

Partial funding of the benefits will come from a \$120 million unsecured bankruptcy claim that the §114 Committee was allowed. The claim proceeds, contributed to a Voluntary Employees Beneficiary Association Trust (VEBA), will pay a portion of the required retiree contributions. The plan will commence August 1, 2007, subject to the Bankruptcy Court's approval of the agreement. ■

Pilot Training Contract *(continued from page 1)*

The case originated in 2002 when Daniel Pittard applied for a pilot position at Great Lakes Aviation. The airline hired him to fly, subject to successful completion of training to qualify him as a first officer on the BE 1900. On August 5, 2002, Pittard signed the company's pilot training agreement which guaranteed his employment upon successful completion of training. It further provided that Great Lakes would advance the \$7,500 cost of the training; however, if the pilot did not remain employed for at least 15 months, he would be required to repay that sum plus interest at 9.5 percent per year. Pittard also signed a promissory note to repay the training costs in accordance with the training agreement.

Pittard completed pilot training and was employed by Great Lakes in September 2002, but resigned 37 days later. The airline requested reimbursement for the training in accordance with the training agreement. When Pittard did not respond, the company filed a breach of contract complaint in the district court, alleging damages of \$7,356.97 – the initial training cost plus interest, less the amount of the pilot's final paycheck.

Great Lakes pilots, represented by the International Brotherhood of Teamsters (IBT), work under a collective bargaining agreement providing that any subsequent pacts between the parties shall become part of the labor agreement. The labor contract also provides that Great Lakes pilots "shall not be required to pay for any training." On August 4, 2002, the IBT filed a grievance asserting that Pittard's training contract violated the union's labor agreement. Following the company's denial of the grievance, the case moved to arbitration.

While the dispute was pending before the arbitrator, the company's district court claim proceeded. The district court granted the airline's motion for summary judgment, and Pittard filed an appeal. Before Great Lakes could file its appellate brief, however, the arbitrator ruled that the company could enforce the pre-employment training contract because it did not violate the collective bargaining agreement. The arbitrator's ruling was final and binding.

The Supreme Court rejected the district court's conclusion that the airline was free to enforce the training agreement in state court prior to the arbitrator's ruling as to whether that agreement violated the IBT contract. Although Great Lakes's claim against Pittard was based upon the individual training contract, the validity of that agreement depended upon an interpretation of the collective bargaining agreement. The state law claim should not have proceeded without a ruling from the arbitrator. The Court explained that since the arbitrator determined that the training agreement did not violate the collective bargaining agreement, no harm resulted from the district court's premature ruling. The Court found no evidence to support Pittard's argument that he signed the training contract under duress, or his other counterclaims. ■

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Northwest and Attendants Reach a Third Tentative Pact

Northwest and its 9,500 flight attendants, represented by the Association of Flight Attendants-CWA (AFA), have reached a new tentative agreement that cuts labor costs by \$195 million per year. If attendants approve the agreement, the pact would protect AFA's unsecured creditor claim of \$182 million, mirroring terms of other unions' restructuring agreements with the carrier. AFA has the right to sell 40 percent of the claim should the agreement ratify prior to the carrier's exit from bankruptcy. If sold, the claim could provide an estimated payout of \$15,000 to \$18,000 per person. AFA expects to complete the ratification vote by the end of May, and the carrier plans to exit bankruptcy by mid-year.

The proposed pact would maintain the 21 percent pay cut imposed last year. The contract would pay signing bonuses totaling \$16.7 million generated by reducing severance payments under a modified early out program. Other changes include restoration of some premium pay, partial reinstatement of vacation accrual and holiday pay, increased sick leave accrual, and improved scheduling rules. AFA also agreed to give up automatic representation of flight attendants at Compass Airlines, a regional carrier to be launched by Northwest later this year.

Pending ratification and approval of the bankruptcy court, the agreement will become amendable at the end of 2011. Northwest flight attendants rejected two previous tentative agreements in 2006, and have been working under the terms of the first rejected tentative contract that the company imposed in July 2006.

In a related story, a federal appeals court ruled in March that flight attendants are blocked from striking Northwest (*Northwest Airlines Corp. v. Ass'n of Flight Attendants – CWA*, 2d Cir., No. 06-4371-cv(L), 3/29/07). Affirming a lower court decision, Judge John M. Walker directed the AFA to make "every reasonable effort" to reach a new contract. The union was ordered to refrain from self-help until exhaustion of the dispute resolution procedures under the Railway Labor Act. ■

Continental Sues ALPA

Continental Airlines has sued the Air Line Pilots Association (ALPA) to block re-hiring a pilot who had been fired for refusing to submit to a "surprise" alcohol test. (*Continental Airlines Inc. v. Air Line Pilots Association International*, 07-1349, U.S. District Court for the Southern District of Texas.) Continental had employed the pilot under the Federal Aviation Administration's (FAA's) "special issuance program" that requires airlines to follow certain procedures regarding pilots with substance abuse problems.

The case arose in the Fall 2000, when Captain Ronald A. McWhirter failed a random alcohol test prior to his scheduled operation of a B-737. To keep his job, the pilot signed a "last chance agreement" spelling out the conditions of his re-employment. The agreement included a requirement that he submit to five years of surprise alcohol testing. In February, 2005, McWhirter refused to take an unannounced alcohol test, and Continental fired him. ALPA grieved the termination. In 2006, the dispute was submitted to a 3-member arbitration board. Citing mitigating circumstances, two board members - Chairman Richard Kasher and the ALPA board member - voted to reinstate the pilot. The Continental board member dissented.

Continental's suit seeks to vacate the arbitration award, alleging that the decision violates public policy. The airline alleges that the award preempts the "unambiguous language" of the last chance agreement, which constituted a binding contract. Continental claims that the board had no authority to modify that agreement. The company further asserts that federal regulations prohibit airlines from employing staff in "safety-sensitive positions" if those people are unable or unwilling to stay sober at work. ■

NEWS BRIEFS...

NEGOTIATIONS...IAM members have ratified tentative agreements with **Aer Lingus** and **El Al Israel Air... Chautauqua** and the IBT have begun mediation to settle the contract covering fleet and passenger service employees... Bus drivers and mechanics at **Greyhound Lines** rejected a company contract proposal by a 77 percent margin. ATU leaders had recommended rejection of the proposal, described by the union as providing substandard pay and benefits. Greyhound had offered to raise hourly wages by \$0.40 in the 1st contract year, \$0.43 in the 2nd year, and \$0.63 in the last year of the agreement...Approximately 1,100 IAM members at **Hamilton Sundstrand Corp.** have approved a new 3-year contract that boosts wages and increases employee health care contributions. Sunstrand, a supplier of aerospace and industrial products, is a division of United Technologies Corp...**Miami Air** and their pilots, represented by MAPA, have commenced mediation...**REPRESENTATION...****The Aviators Group (T.A.G.)**, the labor organization representing **Evergreen**

pilots, plans to merge with **ALPA**, which has been providing limited benefits to T.A.G. through a services agreement. After more than two years of negotiations with the cargo airline, the pilots expect the merger will strengthen their bargaining position...Also merging with ALPA is the **Capital Cargo Crewmembers Association (CCCA)**, which has represented the pilots and flight engineers of Capital Cargo International Airlines since 1997...**PSA** stock clerks remain union-free for now. The unit of 22 employees cast only 2 votes for the IAM in the recent NMB election...**AIRLINE LABOR...**The number of **U.S. passenger airline employees** grew by about 900 more workers in February 2007 compared to a year earlier, according to the Department of Transportation's Bureau of Transportation Statistics. Although the seven largest airlines continued to pare their ranks over the past year, low-cost carriers boosted their headcounts. Labor costs represented about 24 percent of total airline expenses in 2006, according to the Air Transport Association carrier. ■

Federal Court Denies Eastern Pilots' Seniority Claim in 20-Year Dispute

Former Eastern Airlines pilots have lost another appeal to regain seniority rights lost more than twenty years ago when Eastern merged with Continental (*In Re: Continental et al.*, case number 05-1053, U.S. Court of Appeals for the Third Circuit.) The three-judge panel found that all seniority claims against Continental were discharged when the airline filed for bankruptcy in 1990. The court also denied the Eastern pilots' demand for arbitration with Continental's pilots.

The dispute began in 1986 when Eastern pilots ratified a contract providing protection of the pilots' jobs, governed by seniority, in the case of a merger with another airline. The following day, Continental's parent company acquired Eastern. When the company refused to bargain with the union regarding seniority integration, the union initiated arbitration. Four years later, Continental filed for bankruptcy. Although the union asserted the right to seniority integration as part of the bankruptcy proceedings, the bankruptcy court denied those claims. The union then sued Continental, and most of the former Eastern pilots subsequently reached a settlement with Continental. About 300 pilots, however, continued to pursue damage awards in bankruptcy court and federal district court.

In the latest case, the claimants sought to enforce their seniority claims under the Eastern contract, and to seek arbitration with the Continental pilots who hold positions that were promised to them under the Eastern collective bargaining agreement. Writing for the court, Judge Julio Fuentes noted that two prior appeals had determined that the pilots' seniority claims were discharged in Continental's bankruptcy, so that "any arbitration against Continental will necessarily be futile." In denying the demand to arbitrate with the Continental pilots, the judge observed that since the Continental pilots were not a party to the Eastern contract and did not wish to arbitrate, the court could not compel them to do so. ■

New York Reforms Workers' Compensation Laws

Both employers and workers will benefit from recent landmark reforms to New York's workers' compensation system (Chapter 6 of the 2007 Laws of New York). The "win-win" legislation recently signed by Governor Eliot Spitzer is expected to lower insurance premiums for employers as well as to raise most injured workers' benefits. The new law revises the scope of the compensation system, modifies the structure of the system, streamlines administration procedures, and cracks down on fraud.

Maximum weekly benefits for injured workers will increase from \$400 to \$500 by July 2008. Thereafter the maximum benefit will rise by \$50 per week each year until reaching two-thirds of the average weekly wage. Annual indexing will maintain the maximum benefit at that level. Minimum benefits will rise from \$40 per week to \$100 per week. The scope of employer-provided medical services will expand to include dental services and prosthetics. Medical services that can be obtained without preauthorization will increase from \$500 to \$1,000.

Benefit increases will be partly offset by new limits on the duration of benefit payments for permanent partial disability. Such claims currently represent only 15 percent of claims but account for 81 percent of costs. Medical services will continue for this group, however, and new procedures will help these workers return to their jobs. The other changes include:

- Requiring employers to implement a safety incentive plan, as well as a drug/alcohol prevention program that meets specifications to be issued by the state labor commissioner, in order to be eligible for premium credit;
- Closing an expensive "Second Injury Fund," now financed by employer assessments, but often used by some insurance carriers as a costly loophole to avoid paying claims;
- Shutting down the Compensation Insurance Rating Board, which sets employers' rates for workers' compensation, and replacing it with another entity;
- Establishing an expedited hearing process to reduce litigation and reducing the time for workers to receive treatment and return to work;
- Establishing new medical treatment guidelines and improving training for law judges and other employees of the Workers' Compensation Board;
- Requiring insurance policies be issued under laws of New York, and increasing penalties for employers who fail to secure workers' compensation coverage or to maintain accurate payroll records;
- Penalizing claimants who initiate or continue a claim without reasonable grounds by assessing the cost of proceedings and attorney's fees; and
- Establishing new procedures for handling fraud by health care professionals who treat workers' compensation claims. Additionally, physicians who are found guilty of professional misconduct will be removed from the list of authorized provider physicians. ■

Boston Hotel Workers Approve Six-Year Contract

After more than a year of bargaining, 5,000 Boston hotel workers have approved a new six-year contract that provides pay increases and establishes a defined benefit pension plan. Approximately 1,450 members of UNITE HERE ratified the new agreement with Starwood Hotels, on behalf of the Sheraton Boston, the Park Plaza, and two Westin hotels. Because of "me too" agreements, however, the contract also will extend to about 3,550 employees at 15 other Boston area hotels.

The contract includes several improvements to pay and benefits. Non-tipped employees will receive hourly pay rate increases of \$3.50 per hour over 6 years and 3 months of the agreement. Tipped workers will receive half of that increase. The new defined benefit pension will replace a 401(k) plan to which many employees did not contribute. The agreement also boosts the companies' healthcare contributions by \$2.60 per hour, permitting a restoration of health benefits that were cut in 2001. Other provisions reduce room-cleaning quotas for maids, and restore employees' free holiday turkeys at Thanksgiving and Christmas. ■

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