

The Labor Relations Advisor

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Northwest, AMFA Settle Strike

After striking for more than a year, Northwest mechanics have approved a settlement pact that preserves the \$203 million annual labor costs savings required by the company for restructuring. The maintenance workers and cleaners, represented by the Aircraft Mechanics Fraternal Association (AMFA), walked off the job at the end of a 30-day cooling off period on August 20, 2005. In the absence of an agreement with AMFA, the company implemented concessions at that time. Union members rejected an earlier settlement agreement reached in December 2005.

AMFA members ratified the agreement by a 72 percent margin on November 6th. Union leaders had advised members that if the tentative agreement failed to ratify, the labor dispute would continue indefinitely because no further negotiations were anticipated. The agreement will become amendable on December 31, 2011.

The settlement agreement provides the following changes to the contract that was imposed in August 2005:

“AMFA members ratified the agreement by a 72 percent margin on November 6th.”

- Provides across-the-board pay increases of 1.5% each January 1st from 2007 through 2011.
- Increases overtime pay to 1.5x for work over 8 hours per day.
- Increases day-at-a-time vacation days from 5 days to 10 days per year.
- Permits union representatives at large stations to receive pay for handling complaints and grievances.

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Comair Reaches Restructuring Pacts with IBT, IAM

Comair has reached a tentative restructuring pact with the attendants, represented by the International Brotherhood of Teamsters (IBT). The agreement is contingent upon membership ratification, scheduled for completion in mid-November. IBT leaders recommend approval of the pact. Shortly following the flight attendant deal, Comair also reached an agreement with the mechanics, represented by the International Association of Machinists (IAM). The IAM letter of agreement, modifying a concessionary package ratified earlier this year, does not require membership approval. Both the flight attendant and mechanic deals require bankruptcy court approval. Pending approval, both agreements will become effective no later than the year-end 2006. Implementation could occur earlier, depending on when the company settles on restructuring terms with the pilots.

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Fed Ex Pilots Approve New Contract

Fed Ex pilots represented by the Air Line Pilot Association (ALPA), have overwhelmingly approved a four-year agreement that provides pay increases and other improvements. After two years of negotiations, the 4,700 crewmembers ratified their contract by a 95 percent margin in October. This agreement is the first between the company and ALPA; the prior Fed Ex agreement was negotiated by an independent union that merged with ALPA in 2002.

The new agreement provides an immediate pay increase of 9 percent effective October 30, the first increase in the pay scales since December 2003. Captains now earn top hourly pay rates of

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Northwest *(continued from page 1)*

- Pays sick leave at 75 percent for the first 7 continuous sick days; provides full pay for the 8th day and all subsequent continuous sick days.

The agreement also sets the following conditions for the strikers' return to work:

- Strikers' status will convert from "on strike" to "on layoff" from the permanent positions they held at the time of the strike. Former strikers will have no right to exercise seniority for purposes of displacing permanent replacement employees or AMFA-represented workers who had returned to their jobs prior to October 9, 2006.

- Strikers who convert to "on layoff" status will receive 1 week of severance pay per year of service, capped at 5 weeks' pay, as well as any accrued vacation pay. Such pay will be calculated based upon current pay scales.

- AMFA-represented workers who convert to "on layoff" status will be eligible for recall to their former permanent positions, and may file system bids based on their retained seniority.

- Company will not contest unemployment claims filed by striking AMFA members.

- New hire replacement employees and AMFA-represented employees who returned to work prior to the signing of the strike settlement agreement will not be displaced to create vacancies for strikers who convert to layoff status.

- Parties agree to prohibit retribution, retaliation, or harassment due to participation or non-participation in the strike or due to permanent replacement status.

- Strikers who elect to resign from Northwest will receive 1 week's pay per _____ year of service up to 10 weeks' pay, as well as any accrued vacation pay. _____ Pay will be calculated at current base rates. ■

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Court Rejects Flight Attendants' Seniority Suit

A federal district judge has dismissed a suit brought by former TWA flight attendants alleging they suffered age discrimination in the seniority integration after their carrier's 2001 merger with American Airlines (*Anthony v. AMR Corp.*, N.D. Ill., No. 03 C 3681, 9/27/06). Judge Ronald Guzman denied the petition for class action, finding that the plaintiffs had not established a likelihood that the requested relief would redress their alleged injury. Their proposed remedies possibly could even worsen their position, the judge observed.

The suit arose from the seniority integration of the flight attendants at American Airlines and TWA following the airlines' merger in 2001. Prior to the transaction, the International Association of Machinists (IAM) represented TWA attendants, while their colleagues at American Airlines were represented by the Association of Professional Flight Attendants (APFA). In December 2001, the two unions signed a seniority integration agreement (SIA) that set the date of purchase – April 10, 2001 – as the occupational seniority date for the entire TWA group, regardless of their years of service with their original airline.

As the most junior employees at the merged carrier, former TWA attendants were the first to be furloughed during the industry's downtime in 2002. Anthony brought suit under the Age Discrimination in Employment Act (ADEA).

Judge Guzman agreed with the plaintiffs that layoffs had injured their entire group and that their injury stemmed from the terms of the SIA. Although the plaintiffs had demonstrated "injury" and "causation" required for class action standing, the judge found that the requested remedies were unlikely to provide the required relief. Even if the seniority integration agreement could be renegotiated legally to reflect the attendants' years of service at TWA, he explained, "the results of any such negotiation would be entirely too speculative to satisfy the redress ability requirement." The court noted that the plaintiffs' proposed remedies sought to void the SIA, to reinstate the TWA attendants' previously waived bargaining rights, and to circumvent the American-APFA labor agreement.

The former TWA attendants filed suits in several jurisdictions against American and APFA alleging loss of seniority protections due to failure to bargain under the Railway Labor Act. The recent decision involves the only case brought under the ADEA. ■

Comair *(continued from page 1)*

If approved, the IBT deal is expected to reduce labor costs by \$7.9 million. Following are summary highlights of the tentative pact covering 970 flight attendants:

■ **Pay and Expenses.** Hourly wage rates will be reduced by 7.5 percent, creating a pay scale ranging from \$16.50 per hour to \$39.09 per hour. Four years after the date of signing, attendants will receive pay rate increases of 3.5 percent to 5 percent, depending upon length of service. Hourly per diem was cut to \$1.55, with a full snapback to \$1.75 in four years. New hire training pay was also reduced.

■ **Work Rules.** The parties expect to improve productivity by raising scheduled lines of flying to a range of 81 to 91 hours per month, up from 78 to 85 hours. The company can modify the minimum or maximum line values by up to 3 hours in any bid period. Lineholders will be required to report 1 hour prior to departure instead of 45 minutes before take-off. The tentative pact also relaxes limits on reassignments and tightens reserve assignment rules.

■ **Retirement and Insurance.** Starting in 2007, the flight attendants' premiums for medical insurance can increase by up to 10 percent per year. Deductibles and out-of-pocket costs can increase annually by the same percentage as the rise in the cost of living. Although the tentative agreement eliminated the company's contribution to the defined contribution plan, the pact increases the airline's matching contribution to the 401(k) plan for attendants' with 10 or more years of service. The contract also provides for profit sharing beginning in 2007.

Comair's accord with the IAM covers about 550 employees, and improves several areas of the concessionary agreement that mechanics ratified in January of 2006. The deal restores a 2 percent pay cut one year after the effective date of the letter of agreement, and preserves a 2 percent pay increase scheduled for mid-2008. The new pact also moves up the amendable date by one year. ■

NEWS BRIEFS...

FURLOUGHS/RECALLS... Utilizing changes in subcontracting rules in **Northwest's** IAM contracts, the airline has eliminated the jobs of 22 ground handlers at Buffalo and 36 agents and ramp workers at Bradley International Airport. Furlougees may opt to relocate or to receive severance benefits... **NEGOTIATIONS...** Arbitrators have awarded a 2 percent wage increase to **Air Canada** pilots retroactive to July 2006, and a 1 percent increase to **Air Canada Jazz** flight attendants, effective June 2006. Both groups also were awarded future pay increases of 1.75 percent in the summer of 2007 and 2008...**Mesaba** has reached tentative restructuring agreements with ALPA, AFA, and AMFA, just days after a bankruptcy court judge barred the unions from striking and authorized the company to impose 17.5 percent labor cost cuts... **REPRESENTATION...** **Continental** fleet service workers have rejected TWU in its second representation vote in two years...140 fleet service employees at **Gulfstream** have rejected IAM representation. Out of 106 voters, only 21 cast ballots for the union...A

federal judge has rejected ALPA's challenge to Guilford Transportation's 2004 shut-down of union-represented **Pan American Airlines** and the transfer of flying to non-union affiliate **Boston-Maine Airways Corp.** ALPA failed to demonstrate that the action stemmed from management's desire to dump the union, the court ruled... **PENSIONS...**Two-thirds of large employers anticipate the **Pension Protection Act** will require higher levels of funding for defined benefit plans, but companies do not expect the law to halt the long-term trend to replace DB plans with defined contribution plans, according to a recent Towers Perrin survey... The **PBGC** has announced a 2007 annual premium rate increase for the single-employer program to \$31 per participant from \$30. The multiemployer premium remains unchanged at \$8 per participant per year... The **FAA** is soliciting public comments on allowing one member of a 2-person crew to be as old as age 64, as long as the other crewmember is under age 60. Current rules require mandatory retirement of commercial pilots at age 60. ■

Fed Ex Pilots *(continued from page 1)*

\$224.80 on wide-body aircraft and \$193.78 for narrow-bodies. For first officers, the contract sets top-of scale pay rates at \$159.37 per hour on wide-body equipment and \$140.22 per hour for smaller aircraft. In each of the following three contract years, pilots will receive an additional 3 percent pay increase. The pact also provides signing bonuses ranging from \$7,400 to \$30,000, depending upon status.

The parties agreed to modify the health insurance plan and to improve the retirement program. The pact expands the health care provider network to cover locations worldwide. Beginning in 2008, pilots will pay a larger portion of the monthly health insurance premium -- \$20 for single coverage and \$120 for a family. Employee premiums in 2009 and 2010 can rise up to 10 percent each year, as long as the increase is limited to 15 percent over the two years. The defined contribution plan will be enhanced in the second contract year by increasing the company's contribution from 6 percent to 7 percent of pilot earnings. ■

Mexicana Airlines, Pilots Agree to Restructuring

The Mexican Airline Pilots Union (ASPA) has approved an agreement with Mexicana Airlines that marks a new level of cooperation in Latin American labor relations. After several months of negotiations, the parties agreed to cut costs and improve productivity to ensure the company's long-term financial survival. The ASPA pact has trimmed Mexicana's cost structure to compare favorably with the most efficient legacy carriers in the United States. The airline continues negotiations with its other two labor unions for additional cost reductions. ■

Federal Appeals Court OKs Pension Suit by Former US Airways Pilots

Former US Airways pilots may sue the airline's pension plan for alleged violation of the Employee Retirement Income Security Act (ERISA), a federal appeals court has found (*Stephens v. Retirement Income Plan for Pilots of U.S. Air Inc.*, 6th Cir., No. 01-3913, 9/13/06). The pilots argued that the plan violated ERISA by withholding interest on lump-sum distributions pursuant to an oral agreement. The court found the suit was not precluded by the Railway Labor Act (RLA) from being pursued because the claims were not subject to the Act.

In 1994, the airline and the Air Line Pilots Association (ALPA) orally agreed that the company could delay payment of a lump sum retirement benefit until 45 days after the pilot's normal benefit commencement date without paying any interest accrued over that time. The company claimed it needed that time to calculate the exact benefit owed the retiree.

In October 1996, pilot Jim Stephens notified US Airways that he wished to retire on December 1, 1996, and that he elected to receive his benefit as a lump sum. The benefit, calculated as \$488,477 on December 1, was paid to Stephens forty-five days later on January 14, 1997. When the retiree requested \$14,740 in accrued interest, the airline declined to pay it.

Stephens appealed the decision to the retirement board, established by the company and union pursuant to the RLA to resolve "minor" disputes related to interpretation of the airline's pension plan for pilots. The board denied Stephens' claim, relying on the oral agreement and the company's long-standing practice of paying lump sum benefits without interest.

Stephens and three other retired pilots filed a class action lawsuit in January 2000, asserting that the oral agreement was

void under ERISA, and that the pension plan, as interpreted by the retirement board, violated ERISA. The federal district court dismissed the suit for lack of subject matter jurisdiction, holding that because the claims were a minor dispute regarding interpretation of the retirement plan, they fell within the exclusive jurisdiction of the retirement board under the RLA. The plaintiffs appealed. Contending that the oral agreement had effectively changed their collective bargaining agreement, the former pilots argued that their claims were "major" issues subject to the jurisdiction of the federal courts.

Partially reversing the lower court's ruling, the appeals court found that resolution of the pilots' claims regarding the oral agreement was not governed by the RLA, but was subject to federal court jurisdiction. The court rejected the company's argument that an attempt to characterize the oral agreement as illegal under federal law would require an interpretation of the plan, under the exclusive jurisdiction of the retirement board. "If pilots cannot bring their claims to the district court based on subject matter jurisdiction then it creates a potentially dangerous end-around ERISA's limitations on collectively-bargained-for provisions. A company and [union] could be silent as to an issue in their written agreement, then make an oral agreement as to the outcome of the issue which potentially violates federal law," Judge Martin pointed out.

The appeals court dismissed for lack of jurisdiction the claim that US Airways violated ERISA by excluding interest in the lump sum payments. Upholding the lower court's finding on this issue, Judge Martin determined that this claim falls within the jurisdiction of the retirement board because it requires interpretation of specific plan documents. ■

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