LETTER
AIRLINE MANAGEMENT

JULY 2007

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American Airlines Not Required to Provide Travel Benefits to TWA Employees Who Took Early Out

The Third Circuit has upheld a lower federal court's ruling that American Airlines was not required to honor travel privileges provided to employees who took an "early out" in accordance with provisions contained in their collective bargaining agreement with Trans World Airlines (TWA). *See Frazier v. American Airlines, Inc.* The early out provision allowed employees to leave TWA before reaching age 50 in exchange for free space-available travel privileges on TWA and reduced rate travel on other airlines.

The plaintiffs in this case are employees who took the early out before TWA filed its third bankruptcy petition. After the plaintiffs resigned, TWA filed bankruptcy and was subsequently purchased by American Airlines. Although American agreed to honor travel privileges for some retirees, the employees who took an early out were not considered retirees and were not included in this agreement.

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Proposed Legislation Would Clarify Flight Crew Eligibility for FMLA

Legislation has been introduced that would amend the Family and Medical Leave Act (FMLA) to "clarify" the eligibility requirements with respect to airline flight crews. The FMLA requires covered employers to provide up to twelve weeks of unpaid leave in a twelve-month period to eligible employees for the employee's own serious health condition, to care for an immediate family member who suffers from a serious health condition, or for the birth or placement of a child for adoption.

Currently, to be eligible for FMLA leave, an employee must have worked 60% of a full time schedule or 1,250 hours in the preceding twelve-month period. According to sponsors of the "Airline Flight Crew Technical Corrections Act," many flight crew members have difficulty meeting this requirement because of their nontraditional work hours and airline pay practices.

Under the Act, HR 2744, a flight attendant or flight crew member will be considered to have met the FMLA's hours of service requirement if that person has worked 60% of the employee's monthly hour or trip guarantee "or the equivalent annualized over the preceding 12-month period."

The bill was introduced on June 15, 2007 and has been referred to the Committees on Education and Labor, Oversight and Government Reform, and House Administration. We will continue to keep you updated with regard to this legislation. •

Court Certifies Class Action in Pilots' Breach of Fair Representation Claim Against ALPA

A federal district court in Illinois has certified two classes of current and former United Airlines pilots, permitting them to proceed with their claims that ALPA breached its duty of fair representation by the manner in which it distributed the proceeds of $550 million in convertible notes it received as part of United's bankruptcy restructuring. *See Mansfield v. ALPA* (July 9, 2007).

United filed for bankruptcy in 2002. As part of its restructuring, United entered into negotiations with each of its unions to renegotiate the terms of its collective bargaining agreements. In 2005, United and ALPA entered into a letter agreement that set forth the terms of a modified collective bargaining agreement. Among other things, ALPA agreed not to oppose United's termination of the United Airlines Pilot Defined Benefit Pension Plan (the Plan) and agreed to waive any claim that such a termination would constitute a breach of the then-existing collective bargaining agreement. ALPA and United also agreed that if the Plan were terminated, United would provide ALPA with convertible promissory notes with a face value of $550 million for the benefit of ALPA's members. The purpose of the notes was to compensate the pilots who no longer would have the pensions they had expected. The letter agreement between ALPA and United gave ALPA discretion to determine how proceeds from the sale of the notes would be distributed, so long as the allocation was reasonable.

After the Pension Benefit Guaranty Corporation terminated the Plan, United issued the promissory notes to ALPA, which sold the notes for $545.5 million. In August 2006, ALPA distributed approximately $355 million of the proceeds, using a method which excluded from the distribution pilots who were furloughed as of the date of United's exit from bankruptcy.

Subsequently, a group of pilots filed a class action against ALPA, seeking to represent "all similarly situated furloughed pilots who have accepted or will accept recall after United's exit from bankruptcy." The pilots claimed the union violated its duty of

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Wyoming Supreme Court Affirms Judgment in Favor of Airline on Breach of Contract Claim Against Pilot who Violated Training Agreement

The Wyoming Supreme Court recently affirmed judgment in favor of an airline on the airline's breach of contract claim against a pilot who violated his training agreement when he resigned shortly after he was hired and refused to repay his training costs. *See Pittard v. Great Lakes Aviation* (Wyo. April 24, 2007).

In this case, the pilot signed a training agreement when he was hired in which Great Lakes agreed to advance the cost of his training ($7,500); however, the pilot agreed to repay the training amount if he did not work for Great Lakes for at least 15 months after completing training. The pilot completed training and was hired, but resigned 37 days later. Great Lakes requested reimbursement from the pilot for the amount of the training costs, but the pilot refused. Subsequently, Great Lakes filed a breach of contract lawsuit against the pilot in state court, seeking reimbursement of the training costs.

The RLA establishes a comprehensive framework for resolving labor disputes and establishes two classes of disputes - major and minor.

The pilot's employment was covered by a collective bargaining agreement (CBA) between Great Lakes and the union representing the pilots (Teamsters Local 747). The CBA provided that pilots employed by Great Lakes "shall not be required to pay for any training." After the airline filed the breach of contract action, the union filed a grievance with Great Lakes claiming the training agreement violated the terms of the CBA. Great Lakes rejected the grievance and the union appealed to the system board of adjustment.

While the grievance was pending, the state court ruled in favor of Great Lakes on the breach of contract claim, awarding the airline the amount due on the promissory note plus attorney fees and costs. The pilot appealed this decision to the Wyoming Supreme Court. While the case was pending, the adjustment board issued its decision concluding that the CBA permitted the airline to enforce the training agreement.

The Wyoming Supreme Court held that the breach of contract claim was pre-empted by the RLA and the trial court should not have permitted the breach of contract action to proceed without a ruling from the arbitrator. The RLA establishes a comprehensive framework for resolving labor disputes and establishes two classes of disputes – major and minor. Major disputes involve the formation of a CBA or efforts to secure one. Minor disputes are disputes over the meaning of an existing CBA. Thus, "major disputes seek to create contractual rights; minor disputes seek to enforce them."

The RLA pre-empts minor disputes that are grounded in a CBA. In this case, the Court held that the RLA pre-empted the airline's breach of contract claim because the validity of the training agreement was dependant upon an interpretation of specific provisions of the CBA. Thus, since the issue of whether the pilot violated the training agreement could not be determined without first determining whether the agreement was valid under the CBA, the Court held that the state law claim should not have proceeded without a ruling from the arbitrator. However, since the arbitrator ruled that the training agreement did not violate the CBA, no harm resulted from the trial court's premature ruling on the motion.

The Wyoming Supreme Court also rejected the pilot's claim that the state trial court erred in enforcing the pilot training agreement because it violated the CBA. The court held that the arbitrator's decision on this issue was final and binding and it was not the state court's function to review the merits of that decision.

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Senate Includes Age 60 Rule Amendment in Transportation Appropriations Bill

The U.S. Senate has included provisions in the Transportation Appropriations bill (H.R. 5576) that would permit pilots of Part 121 aircraft to fly until age 65. The FAA has announced plans to revise the Age 60 Rule; however, the agency must follow federal rulemaking procedures, which could take as long as two years. By including this provision in the Transportation Appropriations bill, the amendment would take place within 30 days of enactment of the bill.

The Senate version of the bill requires the Secretary of Transportation to modify §121.383(c) of the FAA regulations (14 CFR § 121.383(c)) to eliminate the prohibition against using pilots who are older than 60 and to permit a pilot to fly until age 65, as long as another pilot on a multi-crew aircraft is younger than 60. The bill also provides that the modification of the Age 60 Rule does not provide the basis for a claim of seniority by a pilot who was discharged because of the Age 60 Rule and subsequently seeks reemployment.

The House version of the bill, which was sent to the Senate, did not include the amendment to the Age 60 Rule. The bill has been placed on the Senate Legislative Calendar for July 26, 2007. •

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The Court also rejected the pilot's argument that the training agreement was unconscionable. The Court held that there was no evidence that the agreement requiring the pilot to repay the $7,500 training cost if he did not remain employed for 15 months unreasonably favored the airline. "To the contrary, given that Great Lakes was agreeing to provide valuable training for free, it was not unreasonable for it to require repayment if the employment ended prematurely before it received the benefit of the trained pilot's service."

Further, the Court rejected the pilot's claim that he signed the training agreement under economic duress. The Court held that evidence the pilot quit his job in California, relocated to Wyoming and only then realized that he would have to repay the $7,500 if he was not employed for at least 15 months did not show that he faced "immediate financial ruin" and had no alternative remedy. The Court noted that the pilot "presented no evidence showing why he could not have refused to sign the agreement and, if his refusal caused [the airline] not to hire him, looked for a job elsewhere."

Finally, the Court affirmed the trial court's decision in favor of the airline on the pilot's claims for negligent misrepresentation/nondisclosure and breach of the implied covenant of good faith and fair dealing. •

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fair representation by excluding members of the proposed class from sharing in the proceeds of the promissory notes.

The court granted the plaintiffs' motion for class certification, holding that "these cases are a paradigm of the type of case in which class certification is not merely appropriate, but virtually necessary to the appropriate management of a judicial system and complex civil litigation: a case involving a single decision that impacted a large group of similarly situated persons in the same way. It would make no sense to require such claims to be litigated individually." The court's decision is not a determination of liability; it merely permits the case to proceed as a class action. •

Raising the Bar: Ford & Harrison's 2007 Airline Labor and Employment Law Symposium

Ford & Harrison's 2007 Airline Labor and Employment Law Symposium will be held on Thursday, September 27 and Friday, September 28 at the Grand Hyatt Atlanta in Buckhead. Attendees will have the opportunity to choose from a variety of sessions addressing labor and employment law issues facing the airline industry today.

The registration fee is $145 for clients and $195 for non-clients, which covers attendance at the symposium, all symposium materials, Ford & Harrison's 2007 SourceBook, lunch, a cocktail reception and dinner on September 27, and breakfast and lunch on September 28. For more information, please contact Amy Garrison at 404-888-3989 or go to our web site, http://www.fordharrison.com. •

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The plaintiffs claimed American was required to honor the travel benefits either because they had a direct contract with American or because American and TWA had a contract honoring the travel benefit provision. The federal trial court held that there was no evidence of any such contract and, accordingly, granted judgment in favor of the airline.

The Third Circuit affirmed this decision in a one-page order, stating that it is "in full accord with the judgments and opinion of the district court." •

Recent Election Results

PSA Airlines, Inc.

IBT lost an election to represent Stock Clerks. Out of 22 eligible employees, there were 2 votes for IBT. Dismissal April 11, 2007.

Bradley Pacific Aviation

On March 12, 2007, the NMB issued a determination that Bradley Pacific is subject to RLA jurisdiction. •

If you would like to receive the *Airline Management Letter* electronically, or if you would like to update your mailing address, please contact Shannon Houghton at shoughton@fordharrison.com.

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AIRLINE MANAGEMENT

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