



ASSOCIATION OF FLIGHT ATTENDANTS AFL-CIO

1625 MASSACHUSETTS AVENUE, N.W., WASHINGTON, D.C. 20036 202-328-5400 TLX-904097

July 31, 1986

Dear Republic Flight Attendant,

This is your copy of Arbitrator Laurence Seibel's decision and award in our Successorship/Labor Protective Provisions (LPPs) arbitration issued 7/9/86.

This award is a complete victory for AFA and Republic Flight Attendants against RAL's violation of our agreement (Section 1, Paragraphs D. and E.).

VICTORY

This award means that our contract is binding on NWA; and that RAL Flight Attendants are guaranteed the LPPs.

Therefore, even though the Department of Transportation (D.O.T.) approved the merger without the LPPs, we have them. Northwest (NWA) cannot take them away. The Teamsters (IBT) cannot ignore them.

WHAT DOES THIS MEAN?

I. SENIORITY LIST PROTECTION

No matter what occurs in the merger, we are guaranteed the right to negotiate and, if necessary, arbitrate the way our Seniority List will be integrated. We are entitled to use our chosen representatives (our Seniority List Merger Committee) and our own Counsel. The Teamsters and Northwest cannot just staple us to the bottom of the NWA Flight Attendants Seniority List.

II. ALL LPPS INCLUDING FINANCIAL PROTECTION ---"VESTED RIGHTS"

This award means that no matter what happens, we are assured all of the LPPs which AFA negotiated into our agreement in exchange for concessions in 1982-3 and 1985. Mr. Seibel said on page 21 of his decision:

"The flight attendants 'purchased' the LPP protections (in event of merger, acquisition, consolidation or purchase)...and those protections are in the nature of vested rights."

The LPPs protect us financially (salaries and various expenses) in case of displacement/base closure/moving, furlough, or dismissal. They provide continuation of many fringe benefits such as medical.

III. CONTRACT PROTECTED

This means that our contract cannot be taken away arbitrarily. It can only be changed through negotiations and mutual consent between the Union and the Company. In the case of the LPPs, NWA is bound to them, without change, for two contracts after the 1982-3 agreement. This, therefore, protects the NWA Flight Attendants for any future mergers during that time.

over



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ARBITRATOR SAW POTENTIAL HARM AND PROTECTED US FROM NWA & TEAMSTERS

NWA management and Teamsters testified at the D.O.T. hearings. Transcripts of that testimony and the "Recommended Decision of Administrative Law Judge Ronnie A. Yoder", were a part of this case and are quoted extensively in this decision. Arbitrator Seibel accurately summarized on page 12:

"A fair reading of the entire record leads us to conclude that upon merger Northwest Airlines will consider the AFA certification terminated, will recognize one union for all flight attendants (presumably IBT), will agree to a seniority list produced by the Union that is recognized by the Company as representing all flight attendants, and will consider that the elimination of LPP's from the collective bargaining agreement to be proper subject for collective bargaining either in Section 6 negotiations, or prior to Section 6 negotiations through supplemental negotiations."

Then Mr. Seibel states that the language of Section 1, D. & E. is "clear and unambiguous" and applicable to NWA. Therefore NWA is bound by the provisions of our 1984-7 RAL/AFA agreement, prohibiting such injustices from occurring (see pages 18-20).

Mr. Seibel states on page 22:

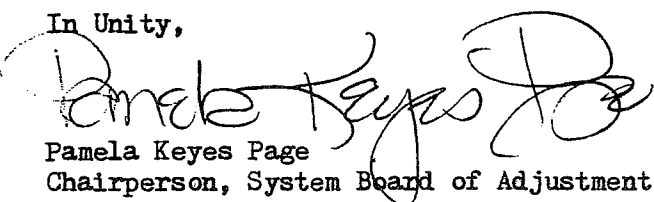
"By their very terms the protections...ensures that the Republic Airlines flight attendants will not be subject to potential loss of their seniority status due to the actions of the representative of another carrier's flight attendants."

On page 23 Mr. Seibel explains the necessity of this powerful award:

"We find, further, that to allow an operational merger to proceed without ensuring that the seniority rights of the Republic Airlines flight attendants would be resolved by the process contained in the LPPs, would effectively result in irreparable harm to the Republic Airlines flight attendants and to the contractual rights for which they bargained and memorialized in the Agreement."

The award then stopped the merger until RAL and NWA fulfilled their obligations under our agreement.

In Unity,


Pamela Keyes Page
Chairperson, System Board of Adjustment

In the Matter of Arbitration:)	
)	
ASSOCIATION OF FLIGHT)	AFA Case No.
ATTENDANTS)	61-99-2-59-86
)	
and)	
)	
REPUBLIC AIRLINES, INC.)	

System Board of Adjustment

Pamela Keyes-Page, Association-appointed Member
 Trish Wills, Company-appointed Member
 Laurence E. Seibel, Impartial Chairman

APPEARANCES:

For the Association:

— Mark B. Bigelow, Esq. —
 Deborah Greenfield, Esq.
 Stephen Crable, Esq.
 Association of Flight Attendants

For the Company:

Raymond J. Rasenberger, Esq.
 Zuckert, Scoutt, Rasenberger & Johnson

BACKGROUND

As a result of the proposed acquisition of Republic Airlines, Inc., by NWA, Inc., and after correspondence and meetings with respect thereto, the Association filed a formal request for arbitration of an MEC grievance on February 27, 1986, which posed, as the Question at Issue:

"Whether the Company is in violation of Section 1.D and 1.E of the Agreement, and all related sections."

The Agreement between Republic Airlines, Inc., d/b/a Republic Airlines (hereinafter called the "Company") and the Flight Attendants in the service of Republic Airlines as represented by the Association of Flight Attendants (hereinafter called the "Union") for the period 1984 to 1987 provides, in pertinent part, as follows:

Section 1, Recognition, Scope and Successorship

D. 1. This Agreement shall be binding upon any successors, administrators, transferees, executors, and assigns of the Company or in the control of the Company (hereafter "successors"), which shall employ the Flight Attendants on the Republic Airlines Flight Attendant System Seniority List in accordance with the provisions of this Agreement, regardless of the nature of transfer of control (including purchase, sale, merger, consolidation, acquisition, transfer of assets, leasing of the operation, reorganization, arrangement for benefit of creditors, bankruptcy).

2. The Company shall provide the Union with the provisions of such transaction carrying out the foregoing obligations immediately upon concluding any contract or other legally binding commitment.

3. This Agreement shall likewise be binding under the foregoing provisions on any parent of the Company, or subsidiary of any parent or of the Company, or any other organization over which the Company, any parent or any subsidiary exercises(s) a controlling interest or management.

E. 1. In the event of a future merger, acquisition, consolidation or purchase, the Company will provide labor protective provisions for the Republic Flight Attendants no less favorable than the labor protective provisions specified by the Civil Aeronautics Board in the Allegheny-Mohawk merger.

2. The Company shall not seek to bargain any provisions for the next two Flight Attendant Agreements after the 1982-1983 Agreement which is less favorable to the Flight Attendants in any respect than the provisions of Section 1 (A) through 1 (H) of the 1982-1983 Agreement, as amended herein. Each and every provision of the next two Flight Attendant Agreements after the 1982-1983 Agreement shall be no less favorable to the Flight Attendants in any respect than the provisions of Section 1 (A) through 1 (H) herein.

3. This Agreement shall remain in full force and effect concurrently with the 1982-1983 Flight Attendant Agreement and the next two ensuing Flight Attendant Agreements.

On January 23, 1986, an Agreement and Plan of Merger was adopted by NWA, Inc., a Delaware Corporation (referred to in that Agreement as "Parent"), and Republic Airlines, Inc., a Wisconsin Corporation (referred to in that Agreement as the "Company"), under which the Parent would organize a wholly-owned subsidiary (hereinafter called the "Sub") under Wisconsin law which will merge with the Company; under this merger arrangement the Company will survive and become a wholly-owned subsidiary of the Parent. The record is clear that after this merger arrangement is completed, NWA, Inc., the Parent of Northwest Airlines, intends to consummate an operation merger between Northwest Airlines, a wholly-owned subsidiary of the Parent, and Republic Airlines, as restructured by the merger arrangement, a wholly-owned subsidiary of the Parent.

On February 7, 1986, Stephen Crable, Esq., Director of Collective Bargaining, AFA, wrote to Mr. Stephen M. Wolf, President and C.E.O. of Republic Airlines with respect to the proposed merger and to Sections 1.D and 1.E as they relate to the proposed merger. That letter was referred to Joseph W. Ettel,

Assistant General Counsel and Assistant Secretary of Republic Airlines, who advised Mr. Crable, by letter dated February 18, 1986, that he, Ettel, had "furnished Northwest Airlines, through the Vice President of Industrial Relations, Terry Erskine, with a copy of the basic labor agreement and a copy of your letter of February 7, 1986."

Subsequently, on February 27, 1986, Ms. Joan Prince, RAL MEC Chairperson, wrote to two officials at Republic Airlines requesting that "Republic immediately comply with Sections 1.D and 1.E., and all related sections of the agreement, and immediately cease and desist from taking any further action in violation of these provisions."

On the same day, February 27, 1986, Ms. Linda A. Puchala, President, AFA, filed a grievance with the Chairperson of the Republic Airlines Flight Attendant System Board of Adjustment. She requested that the Board "... bypass all steps preliminary to consideration of the case by the referee and Board members; that the Company and Union proceed immediately to designate a referee; and that the Board set an immediate date for consideration of the case." The grievance "... did not bypass all steps preliminary to ...," but was considered at a grievance hearing on March 13, 1986; by letter dated March 20, 1986, it was denied by a Company representative. By letter dated March 26, 1986, Ms. Puchala again filed a grievance with the Chairperson of the Board and again "... requested that the Company and Union proceed immediately to

designate a referee and that the Board set an immediate date for consideration of the case." The Company refused to proceed. The Union requested the National Mediation Board to appoint an arbitrator; the Company opposed this request.

The Union then filed an action to compel arbitration under the Railway Labor Act. Judge William T. Hart, United States District Judge, United States District Court for the Northern District of Illinois, Eastern Division, issued the following Order, dated June 6, 1986:

ORDER

Upon consideration of Plaintiff's Motion for Summary Judgment, the opposition thereto, the record herein, and the oral argument of counsel for all parties, it appearing to the Court that summary judgment is warranted in this case, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment is granted; and it is FURTHER ORDERED that

1. The Court directs that Republic submit on an expedited basis to final and binding arbitration of Grievance No. 61-99-2-59-86.

2. Hearing and resolution of the Plaintiff's Grievance No. 61-99-2-59-86 shall be conducted on an expedited basis by the Republic-AFA Flight Attendant System Board of Adjustment pursuant to the terms of the Republic-AFA collective bargaining agreement;

3. The Court finds that it is in the interest of the parties and consistent with the policies of the Railway Labor Act that the Plaintiff's grievance is submitted to arbitration promptly and that it be resolved expeditiously.

4. Republic shall forthwith notify the National Mediation Board that it withdraws its opposition to the AFA's request to the Board for appointment of an arbitrator, and shall attach to said notification a copy of this order.

5. The hearing on the AFA's Grievance shall commence no later than ten (10) days following the date of this order.

6. The Court will hereafter file a statement of reasons for the entry of this order.

/S/ William T. Hart
UNITED STATES DISTRICT JUDGE

As a result of Judge Hart's Order, this System Board of Adjustment was established.

Hearings were held on June 18, 19 and 20, 1986. The Parties introduced 10 Joint Exhibits, the Union introduced 51 Exhibits, and the Company introduced 19 Exhibits. The transcripts of the hearings and these Exhibits constitute the record in this case.

The Parties filed post-hearing briefs at the close of business on July 1, 1986; the Union included with its brief the Recommended Decision of Administrative Law Judge Ronnie A. Yoder, in the NWA-Republic Acquisition Case (Docket 43754), dated June 27, 1986. Judge Yoder's "Ultimate Findings and Conclusions" recommended that the proposed merger of NWA, Inc., and Republic Airlines "... should be approved, subject to the application of standard Allegheny-Mohawk labor protective provisions ..." With respect to seniority integration procedures thereunder, the CAB had created Sections 3 and 13 to provide for negotiation by independent representatives of each merging labor group, with the power to invoke arbitration. In his discussion concerning Sections 3 and 13, Judge Yoder stated:

F. Section 3 and 13 Alone

If the Department does not require full labor protective provisions, it should at a minimum require the application of sections 3 and 13 to the development of a integrated seniority list for each of the employee groups. Northwest and all of the union groups except IBT have agreed to the application of sections 3 and 13 to the development of an integrated list (AFA-T017; Tr. 1288). ...

IBT expressed concern that its agreement to the development of a list would anger the Northwest flight attendants because they have more to lose from seniority integration than do the Republic flight attendants represented by AFA. IBT originally denied that voluntary efforts to agree with AFA on procedures for developing a list had broken down (TR. 908-911). IBT's counsel represented that the reason for the delay was his involvement in the hearing and that progress would resume thereafter (Tr. 910-911). On cross-examination IBT's witness admitted that IBT does not want to develop an integrated list in cooperation with AFA in advance of the merger (Tr. 1314-1315). After the merger IBT hopes to be named as the sole representative for flight attendants and will be able to develop an integrated seniority list which favors Northwest flight attendants, IBT's primary constituents. At the same time IBT's witness stated that if the Department would require the application of section 3 and 13 procedures to the development of the list, it would 'take her off the hook.' (Tr. 1307.) Moreover, IBT somewhat inconsistently asks for the application of all Allegheny-Mohawk LPPs, including sections 3 and 13. ... We conclude that IBT's misrepresentations to the Judge (Tr. 1315-1318), the risk of discrimination against Republic flight attendants, IBT's obvious bias in favor of Northwest flight attendants, and the agreement of Northwest and AFA (and the other unions) to such a provision, constitute special circumstances warranting the application of section 3 and 13 procedures to the development of an integrated seniority list for all employee groups. (IBT refers to the International Brotherhood of Teamsters).

With respect to the transcript citations by Judge Yoder, it should be noted that Union Ex. 18 includes transcript pages 784-952 (Terry Eskine, Northwest Airlines) and Union Ex. 50 includes transcript pages 1271-1338 (Claudia Bushbaum, International Brotherhood of Teamsters). As noted, these exhibits are included in the record of this case.

If Judge Yoder's "Ultimate Findings and Conclusions" with respect to the application of labor protective provisions to its approval of the merger were adopted by the U.S. Department of Transportation, it would significantly resolve the matter of

relief requested by the Union. But there is no assurance that this will occur. It is necessary, therefore, that the Board act expeditiously, as ordered by Judge Hart, to determine the contract issue submitted to it, and to determine an Award, if any, prior to a final determination by the U.S. Department of Transportation with respect to the acquisition case (Docket 43754).

After enactment of the Airline Deregulation Act of 1978, the CAB announced a change in its traditional labor protection doctrine. In 1979, the Board:

... put all labor parties on notice that labor protection in the future will be provided only if and when the Board determines that it is required by special circumstances. LPP's will no longer be imposed as a matter of course, or because tradition dictates their use. We therefore advise labor to negotiate its own merger protections through the collective bargaining process at the first opportunity. Texas Int'l-Pan Am-National Acquisition Case, Order 79-12-163/164/165, at p. 67.

Since that time the Board continued to impose the Allegheny-Mohawk formula in merger cases when it found that the Unions had insufficient time to respond to the Board's 1979 notice; this lack of time was deemed to be a "special circumstance" that warranted the imposition of labor protective provisions. The record in this case is clear that in exchange for concessions of substantial monetary value at a crucial time for the Company, the Union and the Company bargained out the provisions of Sections 1.D and 1.E of the current Collective Bargaining Agreement.

The Company has argued that there is a distinction between NWA, Inc., and Northwest Airlines. Whatever technical distinction there may be for other purposes, there is none for the purposes of this case. While NWA, Inc., is the signatory to the merger agreement, it was Northwest Airlines (a) to which Mr. Ettel referred Mr. Crable's letter of February 7, 1986; (b) which appeared at the Department of Transportation hearing, through its officers; and (c) which intervened in the case before Judge Hart. For the purposes of this case and the issue presented herein, I find NWA, Inc., and Northwest Airlines to be indistinguishable; for the purposes of this case, there is no functional distinction between them.

Finally, before discussing the arguments of the Parties, it is important to set forth what is basically at issue. The record indicates that Northwest Airlines employs approximately 3700 flight attendants who are represented by the International Brotherhood of Teamsters, and that Republic Airlines employs approximately 2840 flight attendants who are represented by the Association of Flight Attendants. In an affidavit (Company Ex. 4) submitted to Judge Hart, Mr. Terry M. Erskine, stated:

1. I am the Vice-President for Industrial Relations of Defendant-Intervenor Northwest Airlines, Inc., and in that position I am responsible for the administration of all collective bargaining agreements between Northwest and the unions representing Northwest employees, for formation and implementation of Northwest's labor relations policies, and for resolution of all labor relations matters arising between Northwest and its employees.

2. After the operational merger of Northwest and Republic Airlines, I will be responsible for the labor relations between Northwest and all former Republic employees, and administration of all surviving Republic collective bargaining agreements, including the Republic-AFA agreement.

3. The International Brotherhood of Teamsters is the certified collective bargaining representative of the craft or class of flight attendants employed by Northwest Airlines, Inc., and Northwest and IBT are parties to a valid and binding collective bargaining agreement governing the rates of pay, rules, and working conditions of all current Northwest flight attendants.

4. After the merger, Republic flight attendants will become Northwest employees.

5. Pursuant to the decision of the National Mediation Board in Republic Airlines, Inc., 8 N.M.B. 49 (1980), Northwest will continue to recognize IBT after the merger as the exclusive collective bargaining representative of all Northwest flight attendants, and will consider AFA's certification to be extinguished by operation of law.

6. I have examined ~~Section 1~~ of the Republic-AFA collective bargaining agreement, and I understand that it states that AFA shall be recognized as the exclusive collective bargaining representative of the Republic flight attendants. See Joint Exhibits in Support of Motions to Dismiss by Defendant and Defendant-Intervenor at 70 ("Joint Exhibits").

7. Although Northwest legally cannot promise, in light of the NMB's Republic holding, that it will treat with AFA as the representative of the former Republic flight attendants after the merger, Northwest will honor fully all other terms of the Republic-AFA collective bargaining agreement.

8. I also understand that the other obligations imposed on Republic by Section 1 of the Republic-AFA collective bargaining agreement include Labor Protective Provisions no less favorable than those imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger.

9. In accord with the provisions of Section 1 of the Republic-AFA agreement, and except as explained at ¶ 7 above, Northwest will be bound by the terms of that agreement after the merger. I informed AFA of that fact by letter dated March 10, 1986. See Joint Exhibits at 1. I also testified to that fact under oath before the Department of Transportation on May 2, 1986, in direct testimony and under cross-examination by AFA counsel. See Joint Exhibits at 31.

10. I am aware of one potentially conflicting provision between the Northwest-IBT collective bargaining agreement and the Republic-AFA agreement, i.e., the manner by which seniority integration will be accomplished in the event of a merger.

11. The IBT contract does not appear to provide for arbitration of seniority integration disputes, and the AFA contract does appear to provide for arbitration of seniority integration disputes.

12. Northwest favors and would recommend arbitration as the means to resolve any disputes over seniority integration that cannot be resolved through agreement between the parties.

13. I am familiar with the allegations of AFA's Grievance No. 61-99-2-59-86, and reaffirm that Northwest has given all the assurances that it believes it can provide, within the legal confines of the NMB's decision in the Republic case, with regard to its intent to honor the Republic-AFA agreement. In Northwest's view, the AFA contract's requirement that a future merger partner of Republic must assume the obligations of the contract are met fully by Northwest's letter to AFA and my sworn testimony.

14. After the merger, if former Republic flight attendants believe that Northwest is failing to honor any term of the agreement between Republic and AFA, they will have full access to the grievance and arbitration procedures set forth in that agreement as they do under the agreement at this time.

/S/ Terry M. Erskine

At the D.O.T. hearing, Mr. Erskine testified (Company

Ex. 3) that:

II. Operational Merger

Northwest intends to combine the operations of Northwest and Republic to the fullest practical degree as soon as practical in the company's judgment after consummating the acquisition. Upon Northwest's acquisition of control of Republic, a single, combined management will be responsible for all facets of the airline's operations, including labor relations.

III. Impact on Employees

In the absence of acceptable transition arrangements resolving questions of appropriate union representation, on the date of acquisition of control, Northwest will recognize an appropriate labor organization as the bargaining representative for each appropriate class and craft currently represented at both carriers by any labor organization(s). Northwest will agree to accept union-produced integrated seniority lists produced by the appropriate labor organization(s) as part of a transition arrangement acceptable to the company. Republic is obligated to

provide LPP's to its employees to the extent set forth in their existing collective bargaining agreements. Following the merger of its operations with Republic, Northwest will apply Republic employees with the LPP's set forth in their existing collective bargaining agreements unless and until changes are agreed to between Northwest and the appropriate labor group(s) or unless and until the procedures of the Railway Labor Act for resolving major disputes have been exhausted."

A fair reading of the entire record leads us to conclude that upon merger Northwest Airlines will consider the AFA certification terminated, will recognize one union for all flight attendants (presumably the IBT), will agree to a seniority list produced by the Union that is recognized by the Company as representing all flight attendants, and will consider that the elimination of LPP's from the collective bargaining agreement to be a proper subject for collective bargaining either in Section 6 negotiations, or prior to Section 6 negotiations through supplemental negotiations.

POSITIONS OF THE PARTIES

The Parties are in dispute in two general areas: jurisdiction and the interpretation and application of Sections 1.D and 1.E.

Jurisdiction

The Company maintains, and has so maintained before Judge Hart, that this dispute involves the question of representation and, therefore, this System Board lacks jurisdiction to decide such dispute. The Company contends that the Railway Labor Act clearly provides that representation issues are to be resolved solely by the National Mediation Board, and not by the courts or by a system board; that Northwest Airlines repeatedly has bound itself fully to carry out AFA's Agreement with Republic Airlines in all respects, including the LPPs, except for recognizing AFA as the post-merger representative of the Republic flight attendants; and that every issue in this case is moot except for the representation issue.

The Union maintains that the issue it presented -- whether the Company has violated Sections 1.D and 1.E and related sections, and if so, what shall be the remedy, an issue that concerns whether the Company has fulfilled obligations it undertook under the Agreement -- involves a minor dispute that the Parties agreed to resolve under the System Board of Adjustment procedure provided for in the Agreement; further, Judge Hart has confirmed that the System Board has jurisdiction to hear and determine this dispute.

Interpretation and Application of Sections 1.D and 1.E

The Company maintains:

(a) That it has not violated Section 1.D.1 since it is directed to situations in which Republic Airlines, as a corporation, would be extinguished or in which Republic Airline's corporate rights and duties may become those of another person or entity in the eyes of the law. No other person or entity will succeed Republic Airlines because Republic Airlines will continue as a separate corporation. In any event, even if Republic Airlines were to be extinguished by merger into another corporation, under Wisconsin Business Corporation law, which would apply, Republic Airlines' contracts would survive. Further, the question of successorship, as it concerns the Company's collective bargaining agreements, is a matter of Federal labor law under which the Union's contract claim of successorship would be held not to survive the consolidation of Republic Airlines and Northwest Airlines operations into those of a single carrier; this is true regardless of whether Section 1.D.1 is viewed as referring to corporate or operational successorship.

(b) That even if Section 1.D.1 applied, Section 1.D.2 does not require Republic Airlines to bind entities described in Section 1.D.1; in reality, this discussion involves only the question whether Republic Airlines was obligated to bind Northwest Airlines to recognize the Union as a collective bargaining representative since Northwest Airlines has voluntarily accepted

the agreement in all other respects. The Company maintains, by argument and reference to relevant case law, that the language of Section 1.D.2 does not support the Union's interpretation; that the negotiating history does not support the Union's interpretation of Section 1.D.2; that other relevant factors, such as the absence of reliable evidence that the Company accepted language which would have severely limited a traditional management prerogative, are at odds with the Union's position; that the Union's position is not supported by the decisions of other arbitrators; and that if Section 1.D.2 has any applicability as a notice provision, the Company's actions have satisfied it.

(c) That Republic Airlines has not violated Section 1.D.3. The Company maintains that Section 1.D.1 and 1.D.3, by themselves, create no new obligations for the Company. If they are enforceable, which they are not, they would provide the basis for actions by the Union against successors, assigns, parents, subsidiaries of parents, and other categories of persons named.

(d) That the Company has not violated Section 1.E. That provision takes effect only when the triggering event takes place, such as a merger or acquisition. There has been no such event, and the Union's theory necessarily must involve some kind of anticipatory breach which has not been proved. NWA, Inc., the controlling entity, considers itself bound to provide the LPPs to no less extent than Republic Airlines itself would be bound. The Union's true grievance with respect to Section 1.E is, again, a

representation matter. Apparently, it argues that it, or persons sponsored by it, be permitted to represent Republic Airlines flight attendants in the seniority list integration process, and that Republic Airlines is obligated under Section 1.D.2 to obtain assurances from Northwest Airlines to this effect. The Company argues again that Section 1.D.2 does not bind Northwest Airlines to accept the Union's Agreement, much less any particular interpretation of the terms of that Agreement; that any issue about the proper application of LPPs is to be considered under the contractual grievance procedure when it arises; that following combination of Republic Airlines and Northwest Airlines, the Union will have no automatic right to represent the former Republic Airlines flight attendants; that it is clear from the record that the Union's grievance is not against Republic Airlines or Northwest Airlines but against the IBT, which thus far has refused to make an arrangement with the Union which would guarantee the role it seeks in the seniority list integration procedure or process; and that while the IBT has declined to state how it will assure that such seniority integration would be conducted in a "fair and equitable" manner as required by the LPPs and by the IBT's own "duty of fair representation," there is no reason to assume that the IBT is not prepared to, or will not, honor its "duty" in this regard.

The Union maintains that the language in Sections 1.D and 1.E is clear and unambiguous on its face; that Section 1.D requires that any "successors" be bound to the Agreement; that within the

content of Section 1.D, Northwest Airlines is a successor for it will succeed to all of the Republic Airlines operations, equipment and employees that the Company had prior to merger; that within the context of Section 1.D, NWA, Inc., is both a successor and a future parent of the Company; that Section 1.D requires that immediately upon concluding an agreement to merge, the Company "shall provide" the Union with a legally sufficient, written commitment binding the "successors" to the Agreement; and that Section 1.E requires that the Company "will provide" labor protective provisions, as noted.

DISCUSSION AND OPINION

This System Board was created by Judge Hart's Order which provided for an expedited arbitration hearing and Decision. Given the need for a prompt Decision and in view of the magnitude of the record and the extensive post-hearing briefs, it is impossible to comment in detail upon the record evidence, the contentions raised by the Parties (and the citation of court and agency decisions, law review articles, etc.), or the thought process of the Board in arriving at its findings and conclusions. In view of the combination of circumstances present herein, it must be deemed sufficient to state the conclusions reached by the Board concerning the scope and applicability of Sections 1.D and 1.E, and to address the question of remedy that flows therefrom.

As previously stated in the Background section, we conclude that, for the purposes of this case, NWA, Inc., and Northwest Airlines are indistinguishable. We conclude further that because there is no functional distinction between NWA, Inc., and Northwest Airlines for the purposes of Sections 1.D and 1.E of the Republic Airlines/AFA Agreement, these provisions are applicable, by their clear and unambiguous terms, to both NWA, Inc., and Northwest Airlines. The Company's arguments concerning the import of bargaining history with reference to the meaning and application of Sections 1.D and 1.E are not deemed persuasive by the Board.

The Company's contention that the instant controversy is not arbitrable must be rejected. The Board is not persuaded that the subject matter of the instant grievance concerns a

representational dispute. The Board is not concerned with resolving a question concerning representation which may arise after the merger or consolidation of the flight attendant bargaining units which currently exist at Republic Airlines and at Northwest Airlines. Rather, it is concerned with the question whether Sections 1.D and/or 1.E of the Agreement between the Company and the Union preclude a merger of the operations of the Company with those of another carrier until the substantive protections of those provisions have been met.

The Board is persuaded that the scope of Sections 1.D and 1.E must be determined in the context both of: (a) the 1979 decision of the CAB in Texas International-Pan American-National Acquisition case, referred to above, which transferred from the CAB to the Parties the primary responsibility for providing labor protective provisions thereafter in the event of an operational merger of carriers and (b) the concessionary negotiations which included the adoption by the Parties of Sections 1.D and 1.E of the Agreement.

Sections 1.D and 1.E must be construed together to effectuate the broad protective purposes of these provisions. Section 1.D is not limited, as argued by the Company, by the form of the transfer of control. The language of Section 1.D is clear and unambiguous and binds any successors, administrators, transferees, executors, or assigns (of the Company) or any persons in control of the Company regardless of the nature of the transfer of control,

including purchase, sale, merger, consolidation, acquisition, transfer of assets, leasing of the operation, reorganization, arrangement for the benefit of creditors, or bankruptcy, to abide by the terms of the 1984-87 Agreement between the Company and the Union; obviously the Agreement also includes the provisions of Section 1.E. We conclude, as previously noted, that for purposes of Sections 1.D and 1.E both NWA, Inc., and Northwest Airlines must be considered "successors" of Republic Airlines (as the term "successor" is defined in Section 1.D). No functional distinction may be drawn between NWA, Inc., and Northwest Airlines for purposes of the issue presented in this case. Both NWA, Inc., and Northwest Airlines are required, by virtue of Section 1.D, to be bound by all of the provisions of the 1984-87 Republic/AFA Agreement, and that includes the provisions of Section 1.E. Further, NWA, Inc., and Northwest Airlines are further specifically required by Section 1.E to provide LPPs for the benefit of protected Republic Airlines flight attendants on the System Seniority List.

The Company's contention that the definition of a successor employer should be determined by reference to either Federal labor law or by local corporation law is rejected. In this case, Section 1.D contains its own definition of successorship which is sufficiently broad to encompass all of the various forms of successorship recognized under general law and labor law; for the purposes of this case, the reality of control over labor relations and operations is the touchstone for the application of Section 1.D.

Having concluded that the entire Agreement, including Section 1.E, is binding upon NWA, Inc., and/or Northwest Airlines following their assumption of control over operations and the labor relations of what is currently Republic Airlines, the question presented is -- what substantive rights are involved in Section 1.E, a provision of the Republic/AFA Agreement to which Northwest and/or NWA, Inc., essentially have not indicated their agreement to be bound.

In Section 1.E the Company agreed to provide certain protections to its flight attendants in the event of any future merger, acquisition, consolidation or purchase. It is the opinion of the Board that the merger, acquisition, consolidation or purchase language of Section 1.E also must be construed in pari materia with the scope of Section 1.D.1, and clearly applies to the proposed Acquisition.

The labor protective provisions, specifically Sections 3 and 13, provide a mechanism for the integration of two or more bargaining units into a single consolidated unit. To adopt the Company's contention that NWA, Inc., or Northwest Airlines would not be bound by the provisions of the LPPs because Republic Airlines would continue as a corporate entity would defeat the purpose of Section 1.E and render those protections a nullity. The flight attendants "purchased" the LPP protections (in the event of merger, acquisition, consolidation or purchase) that were provided in the LPPs awarded by the CAB prior to 1979, and those

protections are in the nature of vested rights. By their very terms, the protections dealing with a guaranteed mechanism (which culminates in binding arbitration) for the resolution of seniority integration disputes in a fair and equitable manner (Sections 3 and 13 of the LPPs) ensures that the Republic Airlines flight attendants will not be subject to potential loss of their seniority status due to the actions of the representative of another carrier's flight attendants. Republic Airlines bound itself, by virtue of both Sections 1.D and 1.E, to ensure that any merger of its operations with those of another entity would be contingent upon that entity's recognition of the rights of Republic Airlines flight attendants to have their seniority status determined in accordance with the procedure contained in Sections 3 and 13 of the LPPs. Having so agreed contractually, and having obtained the benefits of the concessions provided by the flight attendants in exchange, at least in part, for those protections, Republic Airlines may not now be permitted to effectively escape from that commitment by asserting that the sole remedy available to the Republic Airlines flight attendants for such action would be a claim for monetary relief to be lodged against Republic Airlines. Nor is referral to the Duty of Fair Representation persuasive. That Duty by the representative of the merged unit of flight attendants is not what was bargained for, and the judicial standard of conduct which may be required by that Duty under the particular circumstances is not the equivalent of the LPPs and does not take the place, or override, the specific protections and procedures of the LPPs.

We find that upon execution of the merger agreement, Republic Airlines violated Sections 1.D and 1.E of the Agreement by failing to bind the "successors" to the 1984-87 Agreement; by failing to bind the "successors" to the LPPs and, particularly, to Sections 3 and 13 thereof; and by failing to provide the Union with an executed copy of the merger agreement that so bound the "successors."

We find, further, that to allow an operational merger to proceed without ensuring that the seniority rights of the Republic Airlines flight attendants would be resolved by the process contained in the LPPs, would effectively result in irreparable harm to the Republic Airlines flight attendants and to the contractual rights for which they bargained and memorialized in the Agreement. Accordingly, the Board believes that an appropriate remedy for the Company's contractual violation must include an Order that the status quo ante be maintained until the earlier of: (1) the exhaustion of the procedures provided in the LPPs for the resolution of seniority disputes, particularly Sections 3 and 13; or (2) an agreement by NWA, Inc./Northwest Airlines and Republic Airlines to resolve the seniority dispute of the Republic Airlines flight attendants and the Northwest Airlines flight attendants in accordance with the provisions of the LPPs, particularly Sections 3 and 13. For the purpose of such Order, it is not material whether that agreement is made by or among these entities or is imposed by the Department of Transportation as a condition for approval of the merger.

AWARD

The grievance is upheld. Republic Airlines, the Company, violated Sections 1.D and 1.E of the Agreement by failing to bind NWA, Inc./Northwest Airlines to the Agreement and to the LPPs.

Republic Airlines shall provide AFA, forthwith, with an agreement with NWA, Inc./Northwest Airlines, the "successors," that will bind the "successors" to the Agreement and to the Labor Protective Provisions, as described in Section 1.E, specifically including the right of the merger representatives selected by the Republic Airlines flight attendants to invoke the procedures of Sections 3 and 13 thereof for the purpose of integration of seniority lists in a fair and equitable manner.

Republic Airlines, Inc., shall provide AFA, forthwith, with an agreement with NWA, Inc./Northwest Airlines, the "successors," not to merge the operations of Republic Airlines and Northwest Airlines until the earlier of: (1) the exhausting of the procedures provided in the LPPs for the resolution of seniority disputes, particularly Sections 3 and 13; or (2) the execution of an agreement by NWA, Inc./Northwest Airlines and Republic Airlines to guarantee that the seniority dispute of the Republic Airlines flight attendants and the Northwest Airlines flight attendants will be resolved in accordance with the provisions of the LPPs, particularly Sections 3 and 13.

Republic Airlines, Inc., is hereby enjoined from proceeding to carry out the provisions of its merger agreement with NWA, Inc./Northwest Airlines until all terms and conditions of this Award have been fulfilled.

July 7, 1986
Date

Laurence E. Seibel
LAURENCE E. SEIBEL
Impartial Chairman

Concur:

Patricia Kaye De

Dissent:

/s/ Trish Wills

