

**Before the Northwest Airlines Flight Attendant  
System Board of Adjustment  
Charlotte Gold - Neutral Chairperson**

<b>Northwest Airlines, Inc.</b>	)	
	)	
<b>And</b>	)	<b>AFA Case No. 88-77-02-181-07</b>
<b>The Association of Flight</b>	)	<b>Company Violation of the 70 Hour</b>
<b>Attendants -- CWA</b>	)	<b>Monthly Minimum Bid Requirement</b>

**Brief of the Association of Flight Attendants**

**Submitted By:**

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**January 23, 2008**

## **Statement of the Case**

On May 30, 2007, Northwest Airlines, Inc. (the Company) and the Association of Flight Attendants (the Union) entered into a collective bargaining agreement which, among other matters, agreed to allow monthly bids to be from 70 to 100 credit hours per month. [Jnt. Ex. 1, Secs. 5.A.3., 6.C.1.a. & d., and 6.C.2.; pp. 5.2, 6.7 & 6.8] A few days after ratification, the Union learned that the Company would not implement the 70 minimum bid language. [Tr. 59] On June 7, 2007, the Union filed a grievance contesting the Company's failure to implement the 70 hour monthly minimum line requirement. This grievance was denied by SuzAnne Balzer on July 18, 2007. This decision of the Company being unsatisfactory, the Union submitted the grievance to the System Board of Adjustment on July 23, 2007. [Jnt. Ex. 2]

The parties selected Arbitrator Charlotte Gold to sit with the System Board of Adjustment to hear this case.

A hearing was held on November 28, 29 and 30, 2007, at which time the parties presented oral and documentary evidence. On January 10, 2008, the Company submitted supplemental materials.

By agreement of the parties, briefs in this matter will be timely filed if postmarked no later than January 23, 2008.

## **Issues**

- I. Whether the Company is in violation of Section 6.C.1 and all related sections of the Agreement and/or established past practice?
- II. If so, what is the appropriate remedy?

## Relevant Sections of the Collective-Bargaining Agreement

Excerpts from Joint Exhibit 1 (the Green Book) [struck language deleted]

### SECTION 3

#### COMPENSATION

##### A. Base Pay

A Flight Attendant shall receive a base pay amount in accordance with his/her longevity at the following rates of pay:

	<u>7-31-06</u>	<u>1-1-07</u>	<u>1-1-08</u>	<u>1-1-09</u>	<u>1-1-10</u>	<u>1-1-11</u>
1 <sup>st</sup> Year	\$1,204.00	\$1,222.20	\$1,234.10	\$1,246.70	\$1,259.30	\$1,284.50
2 <sup>nd</sup> Year	1,297.10	1,316.70	1,330.00	1,343.30	1,356.60	1,383.90
3 <sup>rd</sup> Year	1,388.10	1,409.10	1,423.10	1,437.10	1,451.80	1,480.50
4 <sup>th</sup> Year	1,477.70	1,500.10	1,514.80	1,530.20	1,545.60	1,576.40
5 <sup>th</sup> Year	1,597.40	1,621.20	1,637.30	1,653.40	1,670.20	1,703.80
6 <sup>th</sup> Year	1,845.90	1,873.90	1,892.80	1,911.70	1,930.60	1,969.10
7 <sup>th</sup> Year	2,023.00	2,053.10	2,073.40	2,094.40	2,115.40	2,157.40
8 <sup>th</sup> Year	2,243.50	2,277.10	2,300.20	2,323.30	2,346.40	2,393.30
9 <sup>th</sup> Year	2,266.60	2,300.90	2,324.00	2,347.10	2,370.90	2,418.50
10 <sup>th</sup> Year	2,408.70	2,445.10	2,469.60	2,494.10	2,519.30	2,569.70
11 <sup>th</sup> Year	2,461.90	2,499.00	2,524.20	2,549.40	2,574.60	2,626.40
12 <sup>th</sup> Year	2,524.20	2,562.00	2,587.90	2,613.80	2,639.70	2,692.20
13 <sup>th</sup> Year	2,600.50	2,639.70	2,666.30	2,696.90	2,719.50	2,774.10
14 <sup>th</sup> Year	2,675.40	2,715.30	2,742.60	2,769.90	2,797.90	2,853.90
15 <sup>th</sup> Year	2,715.30	2,755.90	2,783.20	2,811.20	2,839.20	2,895.90

NOTE: On July 31, 2006, the Company unilaterally implemented terms and conditions of employment, including base and incentive rates based on a 75 hour monthly minimum. Those rates remained in place until January 1, 2007, when a 1.5% across the board rate increase was implemented. The rates now contained in these charts reflect a reduction in the monthly minimum hours in this tentative agreement from 75 to 70 hours, causing a corresponding reduction in the monthly base rates. The change in monthly hours does not represent any type of pay rate reduction: the incentive rates are unaffected.

##### B. Incentive Pay

In addition to base pay a Flight Attendant shall receive incentive pay for each hour in excess of seventy credited hours (70:00) per month in accordance with his/her longevity as follows:

	<u>7-31-06</u>	<u>1-1-07</u>	<u>1-1-08</u>	<u>1-1-09</u>	<u>1-1-10</u>	<u>1-1-11</u>
1 <sup>st</sup> Year	\$17.20	\$17.46	\$17.63	\$17.81	\$17.99	\$18.35
2 <sup>nd</sup> Year	\$18.53	\$18.81	\$19.00	\$19.19	\$19.38	\$19.77
3 <sup>rd</sup> Year	\$19.83	\$20.13	\$20.33	\$20.53	\$20.74	\$21.15
4 <sup>th</sup> Year	\$21.11	\$21.43	\$21.64	\$21.86	\$22.08	\$22.52
5 <sup>th</sup> Year	\$22.82	\$23.16	\$23.39	\$23.62	\$23.86	\$24.34
6 <sup>th</sup> Year	\$26.37	\$26.77	\$27.04	\$27.31	\$27.58	\$28.13
7 <sup>th</sup> Year	\$28.90	\$29.33	\$29.62	\$29.92	\$30.22	\$30.82
8 <sup>th</sup> Year	\$32.05	\$32.53	\$32.86	\$33.19	\$33.52	\$34.19
9 <sup>th</sup> Year	\$32.38	\$32.87	\$33.20	\$33.53	\$33.87	\$34.55
10 <sup>th</sup> Year	\$34.41	\$34.93	\$35.28	\$35.63	\$35.99	\$36.71
11 <sup>th</sup> Year	\$35.17	\$35.70	\$36.06	\$36.42	\$36.78	\$37.52
12 <sup>th</sup> Year	\$36.06	\$36.60	\$36.97	\$37.34	\$37.71	\$38.46
13 <sup>th</sup> Year	\$37.15	\$37.71	\$38.09	\$38.47	\$38.85	\$39.63
14 <sup>th</sup> Year	\$38.22	\$38.79	\$39.18	\$39.57	\$39.97	\$40.77
15 <sup>th</sup> Year	\$38.79	\$39.37	\$39.76	\$40.16	\$40.56	\$41.37

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E. Reserve Guarantee

1. In addition to his/her base pay, a Reserve Flight Attendant who is on pay status for a full Month shall receive as a minimum guarantee, compensation equal to ten hours (10:00) at his/her applicable incentive pay rate. Such reserve guarantee shall be equivalent to eighty hours (80:00).

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SECTION 5

HOURS OF SERVICE

A. Domestic Flying

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3. Monthly Maximum Limitations

One hundred hours (100:00) of credited flight time shall constitute the monthly scheduled Maximum, with a corresponding seventy hours (70:00) scheduled minimum, unless:

...

B. International Flying

...

3. Monthly Maximum Limitations

One hundred hours (100:00) of credited flight time shall constitute the monthly scheduled maximum With a corresponding seventy hours (70:00) scheduled minimum, unless:

...

SECTION 6

SCHEDULING

...

C. Bid Awards

1. Type of Line Awards

A Flight Attendant shall be rewarded a line which shall fall into one of the following categories and within the corresponding hour ranges, subject to Section 5.D, 5.E. and 5.F. of this Agreement when applicable:

- a. Regular line: Seventy hours (70:00) to one hundred hours (100:00)
- b. Priority line: Forth-three (43:00) to sixty-nine and fifty-nine minutes (69:59)
- c. Short line: Fifty-seven hours (57:00) to sixty-nine and fifty-nine minutes (69:59)
- d. Reserve line: Seventy hours (70:00) to one-hundred hours (100:00)

2. Line Categories – Minimum and Maximum Hour Range Chart (in hours)

Type of Line:	Monthly Minimum Hour Range	Monthly Maximum Hour Range
Regular Line:	70:00	100:00
Priority Line:	43:00	(69.59)
Short Line:	57.00	(69.59)
Reserve Line	70:00	100:00

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SECTION 10

VACATIONS

A. Vacation Accruals

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3. Off Payroll Impact on Vacation Accrual

A Flight Attendant whose actual credited hours in a month are less than seventy (70:00) shall have his/her monthly vacation accrual reduced in proportion to the percentage his/her actual credited hours are less than seventy hours (70:00), rounded up to the nearest minute. For example:

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SECTION 15

SICK LEAVE

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B. Sick Leave Accrual

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6. Off Payroll Impact on Sick Leave Credit Accrual

A Flight Attendant whose actual credited hours in a month are less than seventy hours (70:00) shall have his/her monthly sick accrual reduced in proportion to the percentage his/her actual credited hours are less than seventy (70:00) hours, rounded up to the nearest minute. For example:

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SECTION 32

AMENDMENT OF AGREEMENT

Either party hereto may at any time propose in writing to the other party any amendment, or amendments which they may desire to make to the Agreement, or supplemental agreements thereto, and if such

amendment or amendments are agreed to by the said parties, such amendment or amendments shall be stated in writing, signed by both parties hereto and shall then be deemed to be incorporated in and shall become a part of this Agreement, or supplements thereto, provided that when such amendment or amendments are not agreed to by both parties, it is understood by the said parties that they both will forego and not exercise any rights they may have to invoke the provisions of the Railway Labor Act, as amended, to cause further consideration of the amendment or amendments in question except as provided in the Effective Date and Duration section of this Agreement.

### SECTION 33

#### EFFECTIVE DATE AND DURATION

This Agreement constitutes and states the full and complete settlement and agreement between the parties on rates of pay, rules and working conditions for all Flight Attendants in the service of the Company for the period of (DOS) through December 31, 2011, and shall renew itself without change until each succeeding December 31 thereafter unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least one hundred fifty (150) days but not more than one hundred eighty (180) days prior to December 31, 2011, or December 31, in any year thereafter. The parties further agree that, in the event an agreement is not reached six (6) months following the amendable date of the current Agreement, they will file a joint request for mediation with the National Mediation Board.

#### A. EFFECTIVE DATE:

This agreement shall become effective in accordance with the Covenants and Conditions Letter of Agreement signed by the parties on May 30, 2007. [Date from Jnt. Ex. 1A]

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#### LETTER 10

Subject: SLIC  
Reference: Section 6- Scheduling

...

The replacement program for the SLIC bidding system is planned for an implementation date no earlier than April, 2008. To facilitate the implementation of the new program, and to ensure continuity of the bidding process, the undersigned parties agree as follows:

1. The current SLIC bidding system will be used until the new system is implemented.

2. Unless specifically superseded by this Agreement, all contract language contained in the June 1, 2000 Collective Bargaining Agreement that specifically addresses the SLIC bidding process shall remain in full force and effect until the new system is implemented unless specifically amended elsewhere in this Agreement.

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**Excerpts from Union Exhibit 13 (the White Book)** [also known as TA1, the unratified first tentative, and containing the unilaterally implemented Terms and Conditions of Employment]

## SECTION 5

### HOURS OF SERVICE

#### A. Domestic Flying

...

3. Monthly Maximum Limitations

One hundred hours (100:00) of credited flight time shall constitute the monthly scheduled Maximum, with a corresponding seventy-five hours (75:00) scheduled minimum, unless:

...

#### B. International Flying

...

3. Monthly Maximum Limitations

One hundred hours (100:00) of credited flight time shall constitute the monthly scheduled Maximum with a corresponding seventy-five hours (75:00) scheduled minimum, unless:

...

## SECTION 6

### SCHEDULING

...

C. Bid Awards

1. Type of Line Awards

A Flight Attendant shall be awarded a line which shall fall into one of the following Categories and within the corresponding hour ranges, subject to Section 5.D. (Line Average, Minimum and Maximum) 5.E. (Individual Voluntary Flex) and 5.F. (Involuntary Flex-Down) of this Agreement when applicable:

- a. Regular line: Seventy-five hours (75:00) to one hundred hours (100:00)
- b. Priority Line: Forth-three hours (43:00) to seventy-four hours (74:00) and fifty-nine minutes (74:59)
- c. Short Line: Fifty-seven hours (57:00) to seventy-four hours and fifty-nine minutes (74:59)
- d. Reserve Line: Seventy-five hours (75:00) to one hundred hours (100:00)

2. Line Categories – Minimum and Maximum Hour Range Chart (in hours)

Type of Line:	Monthly Minimum	Monthly Maximum
Regular Line	75:00	100:00
Priority Line	43:00	74.59
Short Line	57:00	74.59
Reserve Line	75:00	100:00

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LETTER 10

Subject: SLIC  
Reference: Section 6 – Scheduling

...

The replacement program for the SLIC bidding system is planned for an October, 2006 start date. To facilitate the implementation of the new program, and to ensure continuity of the bidding Process, the undersigned parties agree as follows:

- 1. The current SLIC bidding system will be used until the new system is implemented.
- 2. Unless specifically superseded by this Agreement, all contract language contained in June 1, 2000 Collective Bargaining Agreement that specifically addresses the SLIC bidding process shall remain in full force and effect until the new system is implemented.

**Excerpts from Joint Exhibit 3 (the Yellow Book) [the IBT Agreement]**

SECTION 5

HOURS OF SERVICE

A. Domestic Flying

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3. Monthly Maximum Limitations

Eighty hours (80:00) of credited flight time shall constitute the monthly scheduled maximum, with a corresponding sixty-seven hours (67:00) scheduled minimum, unless:

...

B. International Flying

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4. Monthly Maximum Limitations

Eighty hours (80:00) of credited flight time shall constitute the monthly scheduled maximum, with a corresponding sixty-seven hours (67:00) scheduled minimum, unless:

...

SECTION 6

SCHEDULING

...

C. Bid Awards

1. Type of Line Awards

A Flight Attendant shall be awarded a line which shall fall into one of the following

Categories and within the corresponding hour ranges, subject to Section 5.D. of this Agreement when applicable:

- a. Regular line: Sixty-seven hours (67:00) to eighty hours (80:00)
- b. Critical Bid line: Sixty-seven hours (67:00) to eighty hours (80:00)
- c. Partial line: Forty-one hours (41:00) to sixty-six hours fifty-nine minutes (66:59)
- d. Priority line: Thirty-five hours (35:00) to sixty-six hours fifty-nine minutes (66:59)
- e. Short line: Forty-nine hours (49:00) to sixty-six hours fifty-nine minutes (66:59)
- f. Reserve line: Sixty-seven hours (67:00) to eighty hours (80:00)

2. Line Categories – Minimum and Maximum Hour Range Chart (in hours)

Type of Line	Monthly Minimum	Monthly Maximum
Regular Line	67:00	80:00
Critical Bid Line	67:00	80:00
Partial Line	41:00	66:59
Priority Line	35:00	66.59
Short Line	49:00	66.59
Reserve Line	67:00	80:00

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## Facts

The relevant facts in this case are substantially without dispute. The Teamsters (IBT) had represented the Flight Attendants at Northwest Airlines for decades. The last contract they negotiated for the Flight Attendants was in 2000 and is commonly referred to as the Yellow Book. [Tr. 31] This Yellow Book contained a computerized bidding system that was known as Selective Lines Individually Constructed, or SLIC. The SLIC bidding process allowed Flight Attendants to build lines out of pre-built pairings, based upon their bid preferences. The computer built the lines based upon the Flight Attendants bid preferences, until no further lines could be built. The lines had to be built within the minimum and maximum hourly ranges, which were 67 hours minimum and 80 hours maximum, in the Yellow Book. The computer did not determine the line average, but rather the line average was a result of the bidding process. When no further lines could be built, the remaining pairings were placed in open flying, to be picked up by lineholders or covered by reserves. [Tr. 154, 163]

In 2003, the Professional Flight Attendants Association (PFFA), an independent union defeated the IBT in a representational election conducted by the National Mediation Board. PFFA assumed the enforcement responsibilities for the Flight Attendants under the Yellow Book. [Tr. 31]

[O]n September 14, 2005, Northwest Airlines filed for bankruptcy. ... On November 16, 2005, the bankruptcy court ordered relief pursuant to Section 1113 of the Bankruptcy Code granting 60% of the amount of annual cost reduction sought by Northwest from its flight attendants. The initial target was \$195 million dollars per year in cost reductions. The interim relief granted at that time was 60% of that amount. [Tr. 6-7]

Subsequently, in March of 2006, Northwest and the then representative of the flight attendants, the Professional Flight Attendants Association, reached a tentative agreement which provided for [at least] the \$195 million dollars per year

in cost reductions, and the parties colloquially called that agreement TA1. ... [O]n June 6, 2006, TA1 failed a ratification vote. [Tr. 7]

TA1 was rejected by the Northwest Flight Attendants by a vote of 80% against and only 20% for the ratification. [Tr. 32]

TA1 was negotiated on the premise that a new Preferential Bidding System (PBS) would be implemented. Section 6.B.1 stated: "PBS shall be utilized for the monthly bidding process." [Un. Ex. 13, p. 6.5] That Section further provided that there would be a pre-determined line average, and that all flying would be awarded during the bidding process. This was a significant change from SLIC. TA1 provided for a bid line minimum of 75 hours and a bid line maximum of 100 hours. [Un. Ex. 13, pp. 5.2, 5.3, 5.14, 6.9 & 6.10] TA1 further contained a Letter of Agreement which stated:

The replacement program for the SLIC bidding system is planned for an October, 2006 start date. To facilitate the implementation of the new program, and to ensure continuity of the bidding process, the undersigned parties agree as follows:

1. The current SLIC bidding system will be used until the new system is implemented.
2. Unless specifically superseded by this Agreement, all contract language contained in June 1, 2000 Collective Bargaining Agreement that specifically addresses the SLIC bidding process shall remain in full force and effect until the new system is implemented.

[Un. Ex. 13, p. A.27]

In an opinion on June 29, 2006, with an order that followed about a week later, the Bankruptcy Court granted the Company "the right to implement terms and conditions of employment which ... were no worse than TA1." [Tr. 7] The effective date was stayed until July 17, 2006. [Tr. 32]

On July 6, 2006, the Association of Flight Attendants – CWA won a representation election to represent the Northwest Flight Attendants. The Union was certified the next day. [Tr. 8]

The Union began bargaining with the Company almost immediately, since there was a July 17 deadline. These negotiations were substantially different than normal negotiations under Section 6 of the Railway Labor Act. Instead of contractual language proposals going across the table, it was more like interest bargaining, with concepts being discussed at the table. “On July 17, 2006, Northwest and AFA reached a tentative agreement. ... That agreement is colloquially called by the parties TA2.” [Tr. 8] The final agreement was in the form of a series of bullet points with the terms of TA1 accepted where there were no changes to the agreement. [Tr. 35-36; Un. Ex. 2] TA2 contained improvements over TA1, but still maintained a PBS system with a bid line range from 75 hours to 100 hours. “[O]n July 31, 2006, TA2 failed a ratification vote.” [Tr. 8-9] The vote this time was 44.7% for ratification and 55.3% against ratification. [Un. Ex. 3, p. 2]

[O]n August 1, 2006, Northwest implemented consensual agreements with ALPA and the IAM that had been negotiated during the course of bankruptcy. ... [A]nd it implemented imposed terms and conditions of employment for its flight attendants. ... The parties colloquially have called those as TCE, terms and conditions of employment. [Tr. 9]

The terms of TA1 became “the terms and conditions of employment”, according to Brian Moreau. [Tr. 307] The TCE imposed draconian changes to the lives of the Flight Attendants, which included a 21% wage cut, a 50% reduction in vacation accrual, and payment for sick leave at 75% of the hourly rate. [Tr. 122]<sup>1</sup> The TCE replaced the Yellow Book, with the exception of the SLIC

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<sup>1</sup> As an example of the impact of the wage cut, a Flight Attendant who worked a minimum line of 67 hours under the yellow book, would now have to work 85 hours, the current PBS line average, in order to make

bidding system, which remained in place until the PBS could be implemented. “Unless specifically superseded by this Agreement, all contract language contained in June 1, 2000 Collective Bargaining Agreement that specifically addresses the SLIC bidding process shall remain in full force and effect until the new system is implemented.” [Un. Ex. 13, p. A.27] As part of the TCE, the Company immediately imposed the new PBS line range of 75 to 100 hours, as applicable to the SLIC bidding process, from the prior 67 to 80 hour range in the Yellow Book. [Tr.38]

Thereafter, on August 17, 2006, the bankruptcy court denied Northwest's motion to enjoin a strike by AFA. ... Thereafter, on September 14, 2006, the U.S. District Court reversed the Bankruptcy Court's decision and issued an injunction against the strike. [Tr. 9]

Later in September, the parties met in Washington DC primarily to discuss why TA2 failed to ratify. They met again in December, 2006 and in February, 2007. There was no significant progress in any of these meetings. [Tr. 39] However, subcommittees continued to meet more regularly. There was a scheduling subcommittee, consisting of Lovey Offerle and James Yung for the Union and Brian Moreau for the Company. [Tr. 39-40] This subcommittee took issues identified by the parties, and tried to put together a scheduling package that eventually could be agreed to by the parties. [Tr. 243-244] While the issues discussed by the scheduling subcommittee included PBS related issues, most of the issues were not PBS related. [Tr. 227]

On April 19, 2007, the parties went back to the table to try to make a deal. This was prompted by a recent Second Circuit opinion upholding the strike injunction against the Union, and by the Company's immanent exit from bankruptcy. [Tr. 40, 42] The Union members of the scheduling subcommittee had reported to the whole Union

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the same amount of money. Likewise, a Flight Attendant who worked the line average of 74 hours under the yellow book, would now have to work over 93 hours to make the same amount of money.

committee that they thought it would be possible to lower the minimum bid range from 75 to 70. [Tr. 41] On the evening of April 22, this issue was addressed, and agreed to by the Company. [Tr. 43] The Company's cursory notes from that session indicate "range 70-100. OK", clearly indicating agreement. [Co. Ex. 18] This issue appeared on a draft term sheet put together by the Union on the evening of April 25, 2007, which stated: "Reduce monthly minimum from 75 to 70 hours. AGREED" [Un. Ex. 4] It also appeared on the subsequent term sheet, put together by Julie Showers, for the Company, later that evening, which stated: "Reduce monthly minimum to 70 hours." [Un. Ex. 5, p. 2] This term sheet was initialed by both parties in the early morning hours of April 26, 2007.

Due to the lack of time for ratification of TA2, no book of contractual language was put together. Instead, only summaries were used. The feed back from Union members was that they wanted to see the actual language. [Tr. 49] Thus, the parties spent the next several days putting together the language that would be TA3, and which was eventually printed by the Company as the Green Book. [Tr. 48] The scheduling subcommittee worked together to create the language of Sections 5, 6 and 7, while the non-scheduling committee worked on the other sections. [Tr. 110-111, 139] Since the White Book had already been inputted into the computer, it was used as the template, with the negotiated changes made to that language. [Tr. 112] Because the base rate was now being based upon a 70 hour minimum, rather than a 75 hour minimum, the parties were concerned that the reduction in the base pay would look like a pay cut. [Tr. 114-115] Julie Showers drafted a note for the Green Book to allay any concerns. [Tr. 411] She stated, in part: "The rates now contained in these charts reflect a reduction in

the monthly minimum hours in this tentative agreement from 75 to 70 hours, causing a corresponding reduction in the monthly base rates.” [Jnt. Ex. 1, pp. 3.1-3.2]

In the interim, due to the need to communicate with the Flight Attendants about the terms of TA3, the Union put out a summary of the changes from the TCE. This summary had been sent to the Company prior to its publication, so there would be no confusion, and approved by the Company. [Tr. 49-50] That summary states: “Reduce monthly minimum to 70 hours.” [Un. Ex. 6, p. 7 (numbered p. 3)]

In making the appropriate changes to the White Book, to create the Green Book, the parties changed the 75 hour line minimum to a 70 hour minimum in Sections 5.A.3, 5.B.3 and 6.C.1. & 2. [Jnt. Ex. 1, pp. 5.2, 5.11, 6.7 & 6.8] Other than for certain irregular situations, not relevant here, there is no reference in the Green Book to a 75 hour minimum line.

On the evening of April 29, 2007, Lovey Offerle was asked by the Union staff negotiator whether the 70 hour minimum would be effective in June or July, 2007. She thought in July, since the June bids would be over by the time the agreement was ratified. She called Brian Moreau, to ask him when they were planning to implement the 70 hour minimum, and, for the first time, he answered with PBS. She was in shock. [Tr. 208-209] The Union committee members looked through their notes, the proposals, the term sheets, and the contract language, and could find no reference to a delay in implementation of the 70 hour minimum. [Tr. 53] Lovey Offerle even called James Yung, at his home in New Jersey, waking him up. He confirmed that the 70 hour minimum was never tied to PBS. [Tr. 232]

At about 3 AM on the morning of April 30, 2007, Julie Showers and her negotiating team came over to the Union office. “[O]ne of the first things she said was that she knows that it's not written down anywhere in the language that this is tied to PBS. ... [S]he indicated that it was somehow their understanding that it was or should be tied to PBS ....” [Tr. 53] The Union was willing to negotiate over the issue, but no agreement to change the terms was reached. [Tr. 55] Discussion lasted until 9 AM, but in the end, the Union “told the Company that we're not agreeing to change the language, and we're going to take it out for ratification, and if it was ratified, ... we would expect the Company to live up to that term along with all the other terms of the agreement, and if they didn't, we would have a grievance.” [Tr. 55]

The ratification process took the month of May, 2007, with the vote scheduled to be counted on May 29, 2007. During this process, the Union did disclose to the Flight Attendants that the Company might claim that the 70 hour minimum is not to be implemented immediately. The Union expressed that if the Company did not comply with the agreement and implement the 70 hour minimum immediately, that a grievance would be filed and arbitrated. In the interim, on May 14, 2007, the Company filed a Motion in Bankruptcy Court “seeking Court approval at this time so that the modified CBA [the Green Book] may be implemented immediately upon ratification.” [Un. Ex. 7, p. 7] On May 21, the Court “ORDERED that the AFA Restructuring Agreement [the Green Book] shall become effective upon entry of this Order” subject to the conditions in Letter 29, including ratification of the agreement by the membership. [Un. 8, p. 2] On May 29, 2007, the Northwest Flight Attendants ratified the Green Book by a vote of

50.89% for ratification and 49.11% against. [Un. Ex. 9] The terms became effective on May 30, 2007. [Jnt. Ex. 1A]

A few days later, the Union learned that the Company was not going to implement the 70 hour minimum bid provisions of the Green Book. This generated the grievance at issue herein. [Tr. 59]

## ARGUMENT

### I. Introduction

The Flight Attendants of Northwest Airlines have gone through a long and arduous trial during the last several years. Their Company was bankrupt. They were forced to face unilaterally imposed draconian cuts to their wages and other benefits without being allowed to exercise their right to strike. Some of those cuts included a 21% wage reduction, a 50% reduction in vacation, and sick leave being paid at only 75% of their hourly rate. [Tr. 122] The Company has touted the mantra of \$195 million in annual concessions for the Flight Attendants, as if it is some magical incantation. Yet that \$195 million has drastic implications to the lives of the Flight Attendants.

According to the Company, there were 8,116 Flight Attendants at Northwest in June 2007, of which 6,446 were available to fly.<sup>2</sup> If one divides \$195 million by the total number of Flight Attendants, each will have given the Company an average of over \$24,000 annually. If one divides \$195 million by the available Flight Attendants, each will have given the Company an average of over \$30,000 annually. At the same time, Mr. Steenland received an equity award of just under \$27 million, with other executives and management sharing in additional multi million dollars equity awards. [Tr. 406]

This case involves the Flight Attendants attempting to compel the Company to live up to one of the bargained for terms of the collective bargaining agreement; the 70 hour

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<sup>2</sup> On January 10, 2008, the Company submitted two documents purporting to show the Company's actual performance for June through October, 2007. The first, the monthly breakdown, will be referred to herein as Co. Ex. 25; and the second, the summary, will be referred to as Co. Ex. 26. In Co. Ex. 25, under the actual figures for June, there is a line labeled B.1.a. FA Headcount BOM which has the number 8,116. It is assumed that is the total number of Flight attendants. Further, under line B.7. TOTAL FAs AVAILABLE TO FLY, there is the number 6,446. (Due to the size of the print, it is possibly 6,445.) It is assumed that those are the active Flight Attendants.

minimum bid line. Yet, despite Flight Attendants each giving up \$24-30,000 each year, the Company has the audacity to refer to this case as “the big freebie”. [Tr. 23] Not only is that insulting to the thousands of hard working Flight Attendants at Northwest, but it is reflective of the audacious theory of the Company in this case. The Company is requesting this Board to set aside the clear and unambiguous terms of the collective bargaining agreement, due to some unspoken, unwritten desire to continue to impose its own terms and conditions of employment. The Company’s continued recitation that it is being deprived of the \$195 million dollars it is due, is both irrelevant and erroneous.

As will be shown below, the collective bargaining agreement requires the immediate implementation of the 70 hour minimum bid line.

- II. The language of the collective bargaining agreement is clear and unambiguous in requiring a 70 hour bid line immediately.

The only language in the collective bargaining agreement referring to a minimum bid line, refers to a 70 hour minimum bid line.<sup>3</sup> Section 5.A.3. states, for domestic flying: “One hundred hours (100:00) of credited flight time shall constitute the monthly scheduled maximum, with a corresponding seventy hours (70:00) scheduled minimum” subject to irregularities or voluntary adjustments. [Jnt. Ex. 1, p. 5.2] Further, Section 5.B.3., applicable to international flying, utilizes the same language regarding a 70 hour scheduled minimum, subject to the same exceptions. [Jnt. Ex. 1. p. 5.11] Section 6.C.1. states:

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<sup>3</sup> While there is language in Section 5.D.2.b. (p. 5.26) that allows the minimum line value to exceed 70 if the EBLA is 86 or more, that language can only be applied when the Company can establish a base line average prior to the bids. Thus, that language is applicable only to PBS.

A Flight Attendant shall be rewarded a line which shall fall into one of the following categories and within the corresponding hour ranges, subject to Section 5.D, 5.E. and 5.F. of this Agreement when applicable:

- a. Regular line:            Seventy hours (70:00) to one hundred hours (100:00)
- ...
- d. Reserve line:            Seventy hours (70:00) to one-hundred hours (100:00)  
[Jnt. Ex.1, p. 6.7]

Section 6.C.2. goes on to provide the same information in a chart form. [Jnt. Ex. 1, p. 6.8]

In addition, there are other references to 70 hours. In Section 3.B. Incentive Pay, the agreement reads: “In addition to base pay a Flight Attendant shall receive incentive pay for each hour in excess of seventy credited hours (70:00) per month in accordance with his/her longevity as follows:” A chart then follows. [Jnt. Ex. 1, p. 3.2] Further Section 10.A.3. Vacation Accruals and Section 15.B.6. Sick Leave Accrual, both require a prorata reduction in the accrual rate if a Flight Attendant falls below 70 hours in a month. (Jnt. Ex. 1. pp. 10.3, 15.1, 15.2]

Perhaps most telling is the note attached to Section 3.A. Base Pay. This reads in relevant part: “The rates now contained in these charts reflect *a reduction in the monthly minimum hours in this tentative agreement from 75 to 70 hours*, causing a corresponding reduction in the monthly base rates.” [Jnt. Ex. 1, p. 3.1, italics added] This note was drafted by Julie Showers on the morning of April 29, 2007. [Tr. 411] It is the tentative agreement, the Green Book, that reduces the monthly minimum hours to 70. Why would one have a chart reflecting yearly changes in rates of base pay, based upon a 70 hour minimum, if it is not going to apply for over a year? Under the Company’s theory, the 70 hour minimum would only be applicable with PBS, which would be after April, 2008, pursuant to Letter 10. Yet, there is a column in the chart

reflecting a 70 hour base rate for the period of time from 1/1/07 to 1/1/08, clearly prior to PBS. This chart makes no sense unless it is intended to be applicable during a pre-PBS time frame.

Nowhere in the collective bargaining agreement is there any reference to a minimum monthly bid line of 75, other than in an aberrant irregular environment. Given the repeated references to a 70 hour monthly minimum, and the absence of any significant reference to a 75 hour monthly minimum in the agreement, the only conclusion that can be drawn is that the agreement intends there to be a 70 hour monthly minimum.

Also, Section 33, the Duration Section states: “This Agreement constitutes and states the full and complete settlement and agreement between the parties on rates of pay, rules and working conditions for all Flight Attendants in the service of the Company for the period of (DOS) through December 31, 2011 ....” [Jnt. Ex. 1, p. 33.1] If the Green Book is “the full and complete settlement and agreement between the parties”, and there is no reference to a 75 hour monthly minimum, but only to a 70 hour monthly minimum, the agreement requires a 70 hour monthly minimum. In addition, Section 32 requires that any amendment to the agreement be in writing and agreed to by the parties. Absent a written, agreed to amendment to the Green Book, authorizing a 75 hour monthly minimum, it is not part of the parties’ agreement.

The Company may try to argue that a Letter of Agreement authorizing the implementation of the 75/100 monthly minimums and maximums in August, 2006, somehow constitutes an agreement to allow the continuation of a 75 hour minimum. [Co. Ex. 24] However, that letter was never executed. It was part of TA2, which was

rejected by the Flight Attendants. TA2 provided for a 75 hour minimum, and the vote on ratification took place prior to the end of July, 2006. If ratified it would be appropriate to have a 75 hour minimum for August, 2006. If TA2 were not to ratify, the Company would impose the TCE, which also contained a 75 hour minimum, by August 1, 2006. Thus, whether TA2 ratified, or not, there would be a 75 hour minimum in August, 2006. This letter merely reflected that understanding. Since TA2 did not ratify, the Company imposed the TCE, including a 75 hour minimum. [Tr. 397-398] Because of the failure of TA2, the Union did not agree to a 75 hour monthly minimum.

III. Letter 10 requires the implementation of a 70 hour monthly minimum.

Letter 10 provides for the continued use of the SLIC bidding system until PBS is implemented, sometime after April, 2008. It states:

1. The current SLIC bidding system will be used until the new system is implemented.
2. Unless specifically superseded by this Agreement, all contract language contained in the June 1, 2000 Collective Bargaining Agreement that specifically addresses the SLIC bidding process shall remain in full force and effect until the new system is implemented **unless specifically amended elsewhere in this Agreement.**  
[Jnt. Ex. 1, p. A.23]

Paragraph one is the general statement that SLIC will be used, and paragraph 2 is the specific paragraph providing that the language of the Yellow Book will be used, unless there is specific agreement elsewhere in the Green Book. In this instance, the language of Section 6.C.1., which provides a range of 70 to 100 hours for a regular line bid, is the specific amendment to the Yellow Book. There is no specific agreement in the Green Book that would allow a 75 to 100 hour regular line bid range. If the 70 to 100 hour

range is not found to be applicable, then the language of the Yellow Book must apply, which provides for a 67 to 80 hour regular line bid range. [Jnt. Ex. 3, p. 6.17]

The Company wants to look only at the first paragraph which refers to the “current SLIC bidding system”. It wants to argue that since the “current” system under the TCE had a 75-100 hour bid range, that must remain in effect until PBS. This reasoning fails for several reasons. First, paragraph one does not refer to the specifics of the SLIC system, but only the general application of the SLIC system. It is paragraph two that has the specifics. One of the most common rules of contract interpretation is that the specific overrides the general. In this instance, paragraph two overrides any contrary inference from paragraph one.

However, even more compelling, is how that language has been interpreted in the past. TA1, and therefore the TCE, also had a Letter 10 attached to it. That letter reads almost exactly like the current Letter 10, and paragraph one is exactly like the current paragraph one. The TCE Letter 10 reads:

1. The current SLIC bidding system will be used until the new system is implemented.
  2. Unless specifically superseded by this Agreement, all contract language contained in June 1, 2000 Collective Bargaining Agreement that specifically addresses the SLIC bidding process shall remain in full force and effect until the new system is implemented.
- [Un. Ex. 13, p. A.27]

If the Company wants to read paragraph one of the current Letter 10 to require the bid line range under the White Book, or TCE, then it would have had to interpret paragraph one of the TCE Letter 10 to require the bid line range under the Yellow Book. Since the TCE Letter 10 was drafted while under the Yellow Book, if the bid line ranges are part of the “current SLIC bidding system”, then the Company would have been required to

utilize the 67-80 hour bid line ranges when it imposed the TCE in August, 2006. Since the Company imposed a 75-100 hour bid line range, when it imposed the TCE, it did not interpret the “current SLIC bidding system” as including the prior bid line ranges. It cannot now interpret that very same language differently from its earlier interpretation. The “current SLIC bidding system” is not inclusive of the 75-100 bid line range. The 70-100 bid line range is a specific amendment elsewhere in the Green Book, specifically at Section 6.C.1. Letter 10 requires utilization of a 70-100 bid line range with the SLIC system.

Of further interest is the change that the parties made to the language of paragraph two of Letter 10, from the White Book to the Green Book. The parties added the following language to the end of paragraph two: “**unless specifically amended elsewhere in this Agreement.**” This additional language has two effects. First, the parties wanted to make sure that all were aware that there could be amendments “elsewhere in [the] Agreement”; and second, it implies that those amendments did exist. Why add this language if it is not intended to refer to an amendment? The most critical amendment for purposes of this case, was the amendment in Section 6.C.1 requiring a 70-100 hour bid line range for regular lines.

The only way that the Company could impose the 75-100 hour bid line range in the TCE, was by interpreting Letter 10 second paragraph’s reference to “specifically superseded by this Agreement” as referring to the language in Section 6.C.1 of the White Book. Section 6.C.1. in the White Book specifically calls for regular lines to consist of a 75-100 hour range. [Un. Ex. 13, p. 6.9] Brian Moreau agreed that Section 6.C.1. of the White Book was implemented when the TCE were imposed on the Flight

Attendants. [Tr. 309] So the Company did impose Section 6.C.1. of the White Book, with its 75-100 hour bid line range, in a SLIC environment. The only significant change to Section 6.C.1. from the White Book to the Green Book, was changing the bid line range for regular lines from 75-100 hours to 70-100 hours. If Section 6.C.1 established the bid line range in a SLIC environment for the White Book, it also must establish the bid line range in a SLIC environment for the Green Book.

The Company argues that the language of Section 6.C.1 was drafted for a PBS world. Therefore, it cannot be implemented prior to PBS. Yet, the language in Section 6.C.1 of the White Book was also drafted for a PBS world. Section 6.B.1. specifically states: “PBS shall be utilized for the monthly bidding process.” [Un. Ex. 13, p. 6.5] There are repeated references in Section 6.B. and 6. C. to PBS in the White book. Yet that did not prevent Section 6.C.1. in the White Book from being imposed in a SLIC environment. And it cannot stop Section 6.C.1. in the Green Book from being implemented in a SLIC environment. While the parties may have expanded the PBS related language in other parts of Section 6.C., such as for variable lines, the language of Section 6.C.1. in the Green Book remains virtually unchanged, except for the numbers.

- IV. By continuing the 75 hour monthly minimum, the Company is continuing to impose terms and conditions of employment on the Flight Attendants.

When TA2 failed to ratify at the end of July, 2006, the Company unilaterally imposed the TCE. There existed no more agreement between the Company and the Union. While the Court constrained the Company to only impose the terms of TA1 on the Flight Attendants, it was still unilateral and without agreement of the Union. The Flight

Attendants continued to live under the imposed TCE from August, 2006 until the end of May, 2007, when the Green Book was ratified.

When the Flight Attendants ratified the Green Book, the imposed TCE ceased to exist, except in those circumstances where there was explicit agreement to allow the continuation of the imposed TCE. For example, certain changes required software programming. Letter 37 allowed the Company up to one year to implement the required automation changes. [Jnt. Ex. 1, p. A.87] The Company stipulated that there was no technological reason for not implementing the 70 hour monthly minimum. [Tr. 106] As argued above, Letter 10 did not authorize the continued 75 hour monthly minimum, but rather required the implementation of the 70 hour monthly minimum, pursuant to Section 6.C.1. Since there was no agreement to continue the 75 hour monthly minimum, it ceased to exist when the TCE were replaced by the ratified Green Book.

In May, 2007, the Company went into Court seeking approval to implement the Green Book immediately upon ratification of the Green Book. [Un. Ex. 7] That Motion was granted by the Bankruptcy Judge, and he ordered that the agreement become effective upon entry of the order, and satisfaction of the conditions in Letter 29, which included ratification of the agreement. [Un. Ex. 8] Under that order, the TCE was superceded in all respects.

By the Company continuing to utilize the imposed 75 hour monthly minimum, rather than the agreed upon 70 hour monthly minimum, the Company is continuing to unilaterally impose terms and conditions of employment. The Company is, in effect, abrogating the agreement, without authority to do so. The agreement does not allow

the continued imposition of a 75 hour monthly minimum, in direct contradiction to the terms of the agreement.

- V. The bargaining history supports the immediate implementation of the 70 hour monthly minimum.

The start of the bargaining history really begins with the failure to ratify TA2 and the Company's imposing of the terms of TA1. The line range for regular lines was changed in Section 6.C.1 from the 67-80 hour line range in the Yellow Book to the 75-100 hour range in the White Book. This was done without PBS and merely by changing the numbers in that Section. Thus, the parties knew, or should have known that the line ranges found in Section 6.C.1 determined the line ranges in for both SLIC and PBS. Whenever there was discussion about lowering the monthly minimum, it was always applicable to both SLIC and PBS, even if that discussion also talked of lowering the line average, which would be only a PBS issue. The 75-100 hour line range was tied to the 87 hour line average that would be applicable to PBS, but the line range was still imposed under SLIC. Likewise, when the 70-100 line range was discussed in reference to an 85 hour line average, it would also be applicable to SLIC, unless explicitly limited to PBS. The line range was never limited only to PBS.

While the parties met sporadically from September, 2006 to April, 2007, all parties agree there was no significant progress toward an agreement. [Tr. 39, 266] While there were generic ideas presented that the line average and minimums and maximums needed to be lowered, there was no specific discussion about the details at the table, until April. However, the scheduling subcommittee did continue to meet during this time frame, and they did discuss all sorts of scheduling and reserve issues, both related to

PBS and independent of PBS. James Yung testified that most of the items discussed in the subcommittee were non-PBS related. [Tr. 227]

David Barrow-West testified as to how the subcommittee worked.

[Lovey Offerle and James Yung] would go and they would meet with Brian [Moreau] and they would discuss and work out concepts, and Lovey and James would come back on a regular basis, sometimes daily, depending on how often, they would come back daily or sometimes not daily, more sporadically, and they would explain to us what concepts they were working on. It was always clear when Lovey came back, she would consistently say, "This is a package." ... Lovey would come back and say, "This is one of the things we're looking at." And [David Barrow-West] would immediately say, "What are we paying for it? What are we trading for it?" And she would consistently say, "That's not how it's working. This is a package and the package in the end will be a take it or leave it, and it will satisfy the needs of both parties, and that's what you will get." But we didn't talk about trading one, A for B or B for C. ... Lovey and James came back on a regular basis and talked about the 70 hour minimum. They were careful to say that that had not been agreed to by the parties at that point, but that that was the basis, that was the target that they were shooting for and they hoped that it would be accomplished. It was never couched, as I was trying to get at earlier, that one thing bought another, but rather that it would be a cost neutral package of benefits. [Tr. 245-247]

Thus, the subcommittee was putting together a scheduling package that had numerous moving parts, some of which cost the Company and some the Union, but together equaled a neutral package.

One particular subcommittee meeting on March 25, 2007, was testified to by Lovey Offerle and James Yung. That meeting started with a discussion of lowering the monthly minimum to 70, with an offset of raising all of the trade floors from the zero that had been agreed to in TA2 to 52. James Yung testified about this meeting by stating:

[T]here was discussion about the package, and ... it might be hard to make a package with 70 hours without some help. ... [Brian suggested w]ith TA2, ... we were allowed to do mutual trades, open trades, a variety of trades to zero. So, you know, the impression with that, if we were to once go to 52 instead, that would help. [Tr. 228]

This was consistent with Lovey Offerle's testimony, and her contemporaneous notes of that meeting. [Tr. 131-135; Un. Ex. 10] Since the trade floor is not related to PBS, the discussion about lowering the monthly minimum to 70 hours was also not related to PBS. The notes reflect Brian Moreau stating "Since Co was unwilling previously to lower minimum from 75:00 in TA 1 [and] 2, was willing then to remove trade floor to 0." [Un. Ex. 10] Lowering the minimum from 75 hours in either TA1 or TA2 would have been unrelated to PBS, so clearly Moreau was not discussing the trade floor as an offset only as it related to PBS.<sup>4</sup>

Moreau's attempt to make that discussion reflect a discussion of the cost of trades with a reduced minimum, only in a PBS context is disingenuous. He had just testified that under PBS, "the average line hour drives [the] cost, the minimum and maximum is not relevant". [Tr. 277] If the monthly minimum is not relevant to costs under PBS, and he was talking about raising the trade floor to offset the cost of lowering the minimum, he must have talking about lowering the minimum outside of PBS.

The negotiations for TA3, now the Green Book, first began in earnest on April 19, 2007. The issue of lowering the monthly minimum to 70 hours was first raised at the table on April 22, in an evening session. David Borer testified that he raised the issue while running through a list of issues. When he raised the issue of a 70 hour monthly minimum, Julie Showers looked at Brian Moreau, who gave an affirmative response, and then Julie Showers agreed to the 70 hour monthly minimum. [Tr. 43] While there was no discussion as to whether this was or was not tied to PBS, it was raised as a

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<sup>4</sup> The final agreement, the Green book, raised the trade floor from zero to 52 for Open Trades, Mutual Trades, Line Trades, Enroute Trades, and Base Trades, but kept a zero floor for One-Way Trades. [Jnt. Ex. 1. pp. 6.25-6.29] While the language appears to reflect a reduction from 57 to 52 hours, that was from the White Book. TA2, with a trade floor of zero across the board, had been negotiated subsequent to the White book, and was the starting basis for TA3. [Tr. 46]

separate item and agreed to as a separate item. The Company attempts to give this session a revisionist interpretation, by saying that this agreement was in a discussion of line ranges, only applicable to PBS. Yet, the Company's notes of that session reflect a different story. The notes do reflect that there was separate discussion of line ranges, but that the discussion of the 70 hour monthly minimum was a separate discussion, delineated by its own bullet point. The notes state: "—range 70-100. OK" [Co. Ex. 18] The discussion of low, standard and high line ranges had previously been agreed to, according to the notes, with its own "OK", thus closing that issue.

Further, on April 25, in a draft term sheet prepared by the Union, the issue "Reduce monthly minimum from 75 to 70 hours" was indicated as "AGREED". [Un. Ex. 4] This was a separate issue from both variable bidding ranges and line averages. When this was present to the Company on April 25, each item was reviewed item by item and the Company agreed to the reduction in the monthly minimum from 75 to 70 hours. [Tr. 378-379]

When the Company prepared its subsequent term sheet, that became the final initialed term sheet, Julie Showers wrote a separate bullet point reading "Reduce monthly minimum to 70 hours." [Un. Ex. 5, p. 2] In another bullet point, Showers stated: "Reduce PBS monthly average line value from 87 to 85 hours." She specifically added "PBS" to that bullet point, but did not do so for the monthly minimum reduction bullet point. By not adding "PBS" to the monthly minimum reduction bullet point, she was indicating that it was not solely related to PBS.

Further, the parties were concerned that the chart reflecting base pay would show a reduction, since it was based upon a 70 hour minimum, not a 75 hour minimum.

Looking at this it would look like a pay cut. Therefore, the parties wanted an explanatory note so Flight Attendants reading the chart would not get the wrong idea. Julie Showers wrote that note. [Tr. 411] It specifically states: “The rates now contained in these charts reflect a reduction in the monthly minimum hours in this tentative agreement from 75 to 70 hours, causing a corresponding reduction in the monthly base rates.” [Jnt. Ex. 1, p. 3.1] There is no reference in this note that these rates will not become effective for over a year, until PBS is implemented. If the intent was to explain the impact of the base pay chart, the failure to include reference to a delay in implementation until PBS, indicates there was no intent to delay, at that time.

Finally, late on April 29, the Company apparently had buyer’s remorse and reinterpreted when the 70 hour monthly minimum would be implemented. They now wanted it to be with PBS implementation. When the Union heard of this new interpretation the members of team were in shock and frantically sought to figure out where this interpretation came from. They could find no basis for delaying the 70 hour monthly minimum. [Tr. 52-53] Julie Showers brought her negotiating team over to the Union office at 3 AM to discuss this issue. She acknowledged that there was nothing in writing reflecting that the 70 hour minimum should be delayed until PBS. She specifically sought the Union’s agreement to delay implementation of the 70 hour minimum. The Union did not agree to the delay. The discussion lasted until 9 AM. Union refused to delay the 70 hour minimum until PBS, in part because it knew immediate implementation was needed for ratification.<sup>5</sup> [Tr. 53-54] The fact that the Company went to the effort to bring its whole negotiating team to the Union office in the

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<sup>5</sup> Due to the slim margin of ratification, the Union was likely right that an agreed upon delay to the 70 hour monthly minimum would have caused the agreement to be voted down.

wee hours of Monday morning, and stayed there for 6 hours trying to persuade the Union to agree to a delay in implementation of the 70 hour monthly minimum, indicates that the Company knew that their agreement did not contain any provision for a postponement of implementation. If the Company thought the agreement already provided for a delay in the 70 hour minimum until PBS, they never would have come to the Union office at 3 AM, and never would have stayed until 9 AM, seeking a written agreement to allow such a delay.

The bargaining history shows the intent of the parties to implement the 70 hour monthly minimum immediately, and it was only post-agreement buyer's remorse that has caused the Company to attempt to revise history.

#### VI. Fun with numbers.

The company has invoked the \$195 million figure continuously throughout the hearing on this matter, as if by repetition it would transform the language of the agreement. It is important to understand what the \$195 million figure is all about. In bankruptcy court it was determined that labor concessions were necessary to turn the Company around. A total dollar value was determined and each labor group had a specific share of that total. The Flight Attendants' share was \$195 million annually.

As has been demonstrated above, the Flight Attendants took drastic cuts in pay, benefits and work rules to meet its share. It cannot be disputed that these cuts are real.

However, in negotiating both TA2 and TA3, the effort to reach \$195 million was like a shell game. The Company controlled the valuation, and had to reach a result that would pass the sniff test with the other unions. It was the Company who had that

responsibility, not the Union. If the Company valued an item at \$1 million, the Union might argue that it should be \$1.1 million, but what the actual value was will never be known. The Union was perfectly happy to move the numbers around to make it look like \$195 million, even if it was not. The Company knew that it just needed “defensible” numbers. [Tr. 81]

Further, the parties were not precluded from negotiating an agreement worth less than \$195 million. Such an agreement might cause a renegotiation of other unions’ agreements, but it would not make the Flight Attendants’ agreement invalid.

The Company’s invocation of the \$195 million as a basis for setting aside the terms of the Green Book, is kind of like an executive who says at the bargaining table that I’ll give you a pay raise if I can afford a 400 foot yacht, and then negotiates a pay raise for his employees. Subsequent to the agreement he refuses to implement the pay raise, claiming that he cannot afford a 400 foot yacht. Whether or not he can afford a 400 foot yacht is irrelevant, since the pay raise in the agreement was not conditioned on his affording a 400 foot yacht, even if he mentioned it in negotiations, repeatedly.

Likewise, in this case, the \$195 million may have been part of the background in which the agreement was negotiated, but it was never an explicit term of the agreement. While it may have been the Company’s desire to meet or continue the \$195 million in cuts, the agreement that was reached is in place whether or not that desire was met. The Company cannot renege on the terms of its agreement with the Union, based upon a theory that the terms do not meet the \$195 million in cuts, and therefore never could have been intended. The \$195 million argument is irrelevant to any interpretation of the Green Book.

Further, the Union relied upon the Company to determine that the agreement that they reached was valued as the Company wanted. The Union assumed that the Company was doing its job and calculating the value of proposals at the table, to justify its \$195 million in cuts. The Company never said that reducing the monthly minimum to 70 hours was a problem with the \$195 million figure, until after the agreement had been reached. [Tr. 44] As far as the Union knew, the reduction in the monthly minimum to 70 hours fit into the \$195 million in cuts with which it was agreeing. The Union fully understood that the Company had done the appropriate calculations to justify the \$195 million figure while implementing the 70 hour monthly minimum immediately.

And, in fact, the Union would have given \$195 million in cuts with an immediate implementation of the 70 hour monthly minimum. The Union estimates that lowering the minimum to 70, without lowering the maximum of 100 would only result in a reduction of the line average of 2 to 2 ½ hours. The Company introduced a chart showing line averages generated by actual experience from August 2006 through the holiday months. [Tr. 274; Co. Ex. 7] This chart is misleading since it reflects the months immediately after the minimum was raised from 67 to 75 hours, before Flight Attendants had time to adjust to the new line range, and also included the holiday months, with December, in particular, being a notoriously low time month. However, disregarding these discrepancies, it is clear that at least 40% of the Flight Attendants were bidding lines at least 10 hours above the 75 hour minimum. This is not unexpected, since a Flight Attendant who used to fly the average of 74 hours under the Yellow Book, would now have to fly 93 hours to make the same amount of money, due to the 21% pay cut. Flight Attendants still have mortgages and car payments that have to be met, even if

their pay has been reduced. There is no reason to conclude that these Flight Attendants would reduce their bids with a 70 hour monthly minimum, since they could have bid lower under the 75 hour monthly minimum. Further, another 30-35% of the Flight Attendants bid five or fewer hours above the minimum of 75 hours. It is likely that this group would reduce their hours by 5 if the minimum were reduced by 5. Of the remaining 25-30% of the Flight attendants bidding between 80 and 85 hours, it would be suspected that some would reduce their hours and others would not. Taken together, this would result in a reduction of the line average of 2 to 2 ½ hours.

The Company's theory that reducing the minimum by five hours, while keeping the maximum at 100 hours would result in a reduction of the line average by five hours, is untenable. It completely discounts the high time flyers who will remain high time flyers even if there is a reduction in the minimum. Brian Moreau's past experience that lowering the minimum reduces the line average by the same amount, is bunk. Moreau's experience with lowering the minimum, is coupled with a lowering of the maximum at the same time. If both the minimum and the maximum are lowered by five hours, it is not unreasonable that the line average would also be lowered by five hours. However, this not applicable in the instant case where the maximum remains at 100 hours. Further, Moreau's prior experience did not take place in the context of a 21% pay reduction, requiring Flight Attendants to fly significantly more hours to make the same pay as before the pay cut.

A reduction of the line average of 2-2 ½ hours, would result in a need for 140 to 175 heads, based upon the Company's analysis of 70 heads per one hour reduction in the line average. Further, the Company calculates that a reduction of one hour to the line

average costs \$750,000.00. Thus, a 2-2 ½ hour reduction in the line average would cost \$1.5 million to \$1.875 million.

In the numerical breakdown that the Company gave to the pilots, it has a line item labeled “Reduce Average Line Value from 87 hours to 85 hours, reduce monthly minimum to 70 hours”. [Co. Ex. 23] This calculates the cost to the Union in year 2, the first year of the Green Book, as \$1.8 million.<sup>6</sup> Since PBS will not be implemented until Year 3, if then, the line average reduction referenced will not happen until PBS. Yet, the Union is still paying \$1.8 million in year 2, and until PBS is implemented. This \$1.8 million too closely matches the Union’s calculation of the cost of reducing the monthly minimum to 70 hours, to be coincidence. Since this item relates both to reducing the line average and to reducing the monthly minimum to 70 hours, it clearly covers the cost of reducing the monthly minimum to 70 immediately in year 2, or effective with the Green Book.

While the cost summaries given to the Union during negotiations are arranged differently and labeled differently, they are consistent with the document given to ALPA. Company Exhibit 9 has a line item labeled “Reduce Average Line Value from 87 hours to 85 hours.” The costs for this line item in years 2 through 5 are the same as the ALPA line item that includes “reduce monthly minimum to 70 hours”. Significantly, \$1.8 million is costed for year 2. Company Exhibit 9 has an additional column labeled “Incremental Headcount”. This shows that item costing 177 heads, comparable to the Union’s calculation of the additional heads needed to reduce the minimum to 70 hours. Thus, the Union has paid for the immediate reduction in the monthly minimum to 70 hours.

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<sup>6</sup> Year one consisted of the period of time the Flight Attendants were working under imposed work rules.

However, even the Company's cost figures are suspect. On page 2 of the cost summary given to ALPA, there is a line item crediting the Union with \$8.2 million for a reduction of 1,389 heads. This averages out to be a cost of just over \$5,900 per head per year. Seventy heads would cost under \$414,000 per year, not the \$750,000 figure that the Company has stated. Utilizing these calculations, the cost to the Union should be only 55% of the previous calculations, or \$825,000 to just over \$1 million.

This demonstrates two points. First, the Flight Attendants have paid for an immediate implementation of the 70 hour monthly minimum. Second, the numbers can be moved around significantly to justify the outcome of a \$195 million reduction to wages, benefits and work rules.

VII. Implementing the 70 hour monthly minimum is, and was, operationally feasible.

The Company makes a claim that it could not have agreed to an immediate implementation of the 70 hour monthly minimum, because it was not operationally feasible. The Company argues that the Union knew this, not because of discussions around implementation of the 70 hour monthly minimum, but because of the reluctance of the Company to establish a time table for implementing the Early Out. But, David Barrow-West testified that that Company's reluctance to establish an Early Out time table was based upon its not yet having finalized its forecast needs for the fourth quarter, including the holiday months. [Tr. 249] The Company never expressed at the bargaining table that they had operational concerns due to Flight attendant shortages.

If there truly was an anticipated Flight Attendant shortage for the summer, that subject would have been broached at the bargaining table.

The Company's argument rests mainly on a Company Planning Guide, which was not shared with the Union at the time. [Tr. 420; Co. Ex. 21] David Barrow-West testified that the Company has two types of projections, long term projections and short term projections, looking out about 90 days. [Tr. 256-257] The Company Planning Guide that was introduced was clearly a long-term projection document. No short term projection document for the months in question was ever produced. Company Exhibit 21 purports to show a planned shortage of Flight Attendants from June through September, 2007, with an overage thereafter. The actual performance was provided in a chart following the hearing, for the months of June through October, 2007. [Co. Ex. 25] In each of these months, convenience leaves were offered, allowing Flight Attendants to be off work for the full month, and there still was an overage of Flight Attendants. The excess Flight Attendants can be found by adding the convenience leaves and the overage figures. This results in the following calculations: June – 398 extra Flight Attendants; July – 361 extra Flight Attendants; August – 488 extra Flight Attendants; September – 742 extra Flight Attendants; October – 757 extra Flight Attendants. These figures were after 150 Flight Attendants were released through the Early Out program beginning in September.

Stephen Simmons testified that these figures differed from the planned figures due to two reasons. First, there was a reduction in flying beginning with June, due to an anticipated pilot sick-out. [Tr. 441-442] Second, there was an increase in hiring. [Tr. 444] This rationale is suspect. With regard to the increase in hiring, the Company's

summary document shows the Company planned to hire an average of 107 Flight Attendants per month, and they actually hired 107 Flight Attendants per month. [Co. Ex. 26] There was no increase in hiring.

With regard to the first rationale, there can be no question that there was a reduction in flying from the stated forecast for June through October. But blaming it on an anticipated pilot sick out is questionable. According to Julie Showers, the pilot staffing shortage was magically solved when the Company agreed to pay the pilots time and one-half for all hours flown from 80 to 90 in a month. [Tr. 403] If the reduction was caused by the pilot sick out, one would expect to see the reduction disappear when the sick out was over. Yet, in the months of September and October, there is a continued reduction in the number of aircraft hours. This leads to the conclusion that this was either a paper reduction, and there was never an intent to fly those extra hours, or that there was a marketing decision to reduce hours, unrelated to the pilot sick out.<sup>7</sup> If marketing was planning to reduce capacity for the summer and thereafter, that should have been known by the people responsible for covering the flying.

Looking at the SLIC Statistical reports for May and June, 2007, it can be seen that the actual Flight Attendant credit hours remained basically constant between the two months.<sup>8</sup> [Un. Ex. 17, pp. 5, 6]

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<sup>7</sup> It is certainly possible that the Monthly Planning Guide does not project the actually planned flying, but rather the maximum possible flying that could be done. This would be a worse case staffing scenario. It would be interesting to review the "planned" flying for April and May, versus the actual flying for those months, to determine whether there is a built in buffer to handle unanticipated increases in flying.

<sup>8</sup> By adding the Assigned Credit hours, the Carry In Credit hours and the Open Credit hours, it can be determined the actual amount of Flight Attendant credit hours in a month. For the month of May this was 436,714 hours. For the month of June this was 438,399 hours.

Further, Flight Attendant bids must be submitted beginning on the 15<sup>th</sup> of the prior month. [Jnt. Ex. 3, p. 6.8] The available pairings must be available to the Flight Attendants 120 hours prior to the bid deadlines, or, beginning on the 10<sup>th</sup> of the prior month. Prior to that, marketing must establish what aircraft will be flying between which city pairs, the flying must be allocated to the domiciles, and then the pairings must be built for each domicile, from out of that flying. For the June bid, this would normally be started at the end of April, but certainly no later than early May. While Simmons testified that he did not know about the planned reduction in flying for June, or, more accurately, the elimination of an increase in flying for June, during the April negotiation meetings, he certainly must have had an inkling that the amount of flying for June would be less than his paper forecast.

Since ratification of the Green Book was not even scheduled until the end of May, it would be too late to implement the 70 hour monthly minimum for June since the June bid awards would already have been made. Thus, the first month the 70 hour minimum would be in effect for bidding would be July. By the end of May, Simmons clearly knew that there would be an overage of Flight Attendants for June and continuing through the summer, at least. Thus, even if Simmons projected an operational problem with implementing the 70 hour monthly minimum, at the end of April, by the time bids were posted for June, in mid-May, Simmons had to have known that any anticipated operational problem had disappeared. There was no operational basis for delaying the implementation of the 70 hour monthly minimum, on the date of ratification.

## VIII. Remedy

The requested remedy in this case really is two-fold; prospective and retroactive. Prospectively, the Union requests that the Company implement Section 6.C.1. and all related Sections of the collective bargaining agreement immediately, making the 70 hour monthly minimum immediately effective. Retroactive relief is more difficult, since it is hard to calculate the harm caused to an individual Flight Attendant by being forced to work more hours than she or he desires in a given month. It is a form of indentured servitude. If there is any concern about the retroactive relief, the Union requests that the prospective relief be implemented immediately, while the Board determines the appropriate process for determining retroactive relief. This would have the added incentive of limiting the Company's exposure for any retroactive relief to that period preceding the implementation of the 70 hour monthly minimum.

As a suggestion as to the appropriate retroactive relief, the Union must look to a monetary remedy. Such a remedy must be shared equally among all active Flight Attendants, since all were affected, either by not being able to bid a 70 hour line, or not having the option to bid such a line. The Company has suggested that its cost for implementing the 70 hour monthly minimum is \$4 million annually. While the Union has argued above that the Company has overstated its cost, to the extent that the Company believes it has saved \$4 million by not implementing the 70 hour monthly minimum, it should be held to its calculations. A lump sum equal to an annual \$4 million, prorated for the period of time the Company has not implemented the 70 hour monthly minimum, should be established, to be divided equally among all active Flight Attendants.

## Conclusion

Based upon the above arguments and the evidence adduced at hearing, the Association of Flight Attendants requests this Board to find that Northwest Airlines, Inc. violated Section 6.C.1 and all related Sections of the Collective Bargaining Agreement, when it failed to implement the 70 hour monthly minimum immediately upon ratification of the Collective Bargaining Agreement; to order Northwest Airlines, Inc. to immediately implement the 70 hour monthly minimum; to order Northwest Airlines, Inc. to pay all Flight Attendants a monetary claim, as more fully set forth in the Remedy Section of this brief; to retain jurisdiction over this matter, in the event there is a dispute over the implementation of the award; and to grant such further relief as this Board deems just and proper.

Respectfully submitted,

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