# EXHIBIT BB

service in accordance with the provisions of regulation ER–401. MATS has notified Seaboard that it intends to modify contract AF 11(626)–506 so as to provide for a guaranteed ACL of 148 passengers. At Seaboard's present aircraft capacity, this modification will result in a six-passenger deficit although within the 10-percent deviation permitted), and assertedly will result in the cancellation by MATS, without pay, of one flight whenever the accumulated deficit reaches planeload size. Seaboard states that it will lose an important portion of its MATS business on this account. At present it can accommodate only 142 passengers on transatlantic MATS flights because it must operate with multiple crews. The carrier asserts that effective May 1, 1964, after aircraft modifications, 147 passengers will be accommodated.

The facts as presented above by Seaboard in this application were previously brought to the Board's attention on September 26, 1963, and in its comments dated October 28, 1963, relative to the then-proposed amendments to part 288. The minimum load requested results in no disadvantage to MATS, for it pays only on the basis of 142 passengers (or 147 passengers, on and after May 1, 1964), and at the 2.55 cents per passenger-mile rate for round-trip services, or 4.2 cents per passenger-mile for one-way service, as specified in the amendment to part 288. The Board, accordingly, will clarify Seaboard's exemption by amending it specifically to permit the use of a 142-minimum passenger load by Seaboard through April 30, 1964, and a 147-passenger load thereafter through June 30, 1964, necessitated by Seaboard's use of multiple crews.

It is apparent that the process of issuing a certificate of public convenience and necessity could not be completed in time for Seaboard to provide the transportation for which exemption is requested. There is involved here an overall Government procurement policy which constitutes unusual circumstances affecting the operations of the air carrier. The operations of Seaboard are of limited extent both in terms of the total transportation provided and in the particular transportation for which the exemption is sought.

The rates and charges for these services, as well as the rules, regulations, practices, and services in connection with the proposed transportation, have been specified in the contract. The nature of the transportation precludes its use except by the defense agencies. Compliance with section 403 of the Act involves expense and would serve no statutory purpose in these circumstances.

The revenues for this transportation will provide a yield of 2.55 cents per revenue passenger-mile per round trip and 4.2 cents per passenger-mile per one-way trip for at least 142 passengers per trip on the CL–44 aircraft during the period March 1 through April 30, 1964, and for at least 147 passengers per trip from May 1 through June 30, 1964. In the present circumstances, the Board does not find these revenues to be unjust or unreasonable. The carrier has executed a CRAF standby contract. It is evident that the Air Force considers the contract to be in furtherance of the mission of the Department of Defense.

The Board finds that the enforcement of sections 401 and 403 of the Federal Aviation Act of 1958 for the proposed military transportation under the circumstances described herein would be an undue burden on Seaboard World Airlines, Inc., by reason of the limited extent of, and unusual circumstances affecting, its operations, and is not in the public interest.

Accordingly, pursuant to sections 204(a) and 416(b) of the Federal Aviation Act of 1958,

IT IS ORDERED, That the exemption granted to Seaboard World Airlines, Inc., by order E–19742 dated June 27, 1963, and amended by order E–20624 dated March 27, 1964, is further amended specifically to permit the carrier to provide the described services using CL–44 aircraft with loads of at least 142 passengers through April 30, 1964, and 147 passengers for the period May 1 through June 30, 1964, and to this extent the minimum load standards of part 288 will not be applied to Seaboard World Airlines, Inc., in the performance of services under this contract with MATS.

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DOCKET 11699, UNITED-CAPITAL MERGER CASE—order E–20740 adopted April 24, 1964.

On November 27, 1963, there was filed with the Board on behalf of 238 "second officers" (flight engineers) employed by United Air Lines, Inc.

(United), a document entitled "Petition to Set Aside and Vacate Integrated Seniority List and for Other Appropriate Relief." The petition requests that the Board reopen the record in the United-Capital Merger Case for the purpose of holding a hearing and taking evidence in support of petitioners' claim that United and the Air Line Pilots Association, International (ALPA) have failed to integrate seniority in a "fair and equitable manner," as required by section 3 of the labor protective provisions of the Board's order approving the merger, order E–16605 dated April 3, 1961.[1] The petition further requests, among other things, that the Board vacate the integrated seniority list agreed to between United and ALPA on June 11, 1963, and that the Board determine the precise length of service to be accorded petitioners in a manner which credits to petitioners the same flight deck service given all other members of the class similarily situated.

On December 18, 1963, United filed an answer opposing the petition and requesting that it be dismissed. ALPA filed a "statement" in opposition to the petition on December 23, 1963.

By way of background it may be noted that a long-standing jurisdictional dispute between ALPA and the Flight Engineers International (FEIA) was brought to a climax shortly before the merger of United-Capital became effective.[2] In January 1961, upon ALPA's petition, the National Mediation Board (NMB) determined that United's flight deck personnel, comprising both pilots and flight engineers, were the appropriate craft or class for representation purposes. After an election of the flight deck personnel was held, the NMB on May 31, 1961, issued a certificate designating ALPA as the representative of the United flight deck crew members, including the flight engineers. A day after the designation, on June 1, 1961, the employees of Capital became employees of United under the merger. Thereupon, negotiations for the integration of the seniority lists were initiated by the respective merger committees of ALPA which had previously been elected under union procedures. Because of the recent designation of ALPA as the representative of the United flight engineers, the election of the committee to represent the United flight engineers under ALPA procedures was not held until a month after the merger became effective. Negotiations between the representatives of the flight deck personnel to integrate the seniority lists of United and Capital were unsuccessful and arbitration under ALPA policy and internal procedures became mandatory. Two arbitration proceedings followed, the Abrahams Arbitration Award, dated March 28, 1962, and the Cole Arbitration Award, dated August 24, 1962.[3] These arbitration proceedings culminated in establishing an integrated seniority list for all flight deck personnel then employed by United. Thereupon, ALPA and United negotiated an agreement ("letter of agreement", June 11, 1963) incorporating the seniority lists for pilots and second officers in conformity with the arbitration awards.

The instant petition filed by the 238 flight engineers asserts that they have the same basic pilot training as other flight-deck crew members and in addition have a flight engineer certificate and an A & E license; that during the merger proceedings, they were represented before the Board by the UNA Chapter, FEIA, not ALPA which represented the United pilots and both the Capital pilots and "second officers"; that the certification of ALPA to represent all flight crew members forced the petitioners, as a minority with a separate interest, to vote with the more numerous pilots and copilots; that

[1] *United-Capital Merger Case,* 33 C.A.B. 307, 343 (1961). Sec. 3 of the labor protective provisions provides: "Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13."

[2] For a description of the background of that controversy see Report to the President by the Commission to Inquire into a Controversy between Certain Airlines and Certain of Their Employees, May 24, 1961, and Supplemental Report, Oct. 17, 1961 (Feinsinger Report).

[3] The Abrahams arbitration award (exhibit 4 to petition) integrated the seniority lists of the Capital pilots (including Capital's second officers) and the United pilots, but did not rule on the seniority of United's "second officers" (flight engineers), which category included the present 238 petitioners, because ALPA was not certified as the representative of the "second officers" until after the seniority integration procedures had commenced. The Abrahams board therefore held that it did not have jurisdiction to integrate the United "second officers." That matter was left for, and dealt with by, the Cole arbitration award (exhibit 5 to petition).

ALPA should have granted the petitioners' request that a single integrated seniority list be established for all flight crew members for bidding on all three seats on the flight deck; that a single integrated seniority list should grant petitioners a length of service credit dating from their original employment on the flight deck of United with right to bid on any job on the flight deck for which they hold qualifications; that the ALPA elections of representatives to represent petitioners and other "second officers" were not fair in that petitioners were a separate minority who should have been permitted to elect their own representatives separate from other "second officers" representatives; that the seniority list based on the Abrahams arbitration award was improper since it granted pilot seniority to Capital "second officers" and not United second officer flight engineers including petitioners; that the Cole arbitration proceeding was unfair because petitioners were not given leave to participate fully as a party; that the Cole arbitration award was arbitrary and unreasonable because it granted United flight engineers on the pilot "call-up" list higher priority than the 238 petitioning flight engineers who were not on that list, with the result that petitioners were not credited wih seniority based solely on accrued cockpit time for bidding for pilot and copilot seats; that United did not participate in the ALPA arbitrations, took a position of neutrality and despite objections by petitioners entered into an agreement with ALPA accepting the seniority lists set up by the Abrahams and Cole awards; that United and ALPA have acted "in bad faith and in a deliberate effort to subvert an order" of the Board by discriminatorily distinguishing between petitioners and all other members of the bargaining unit.

The ALPA statement filed in answer to the petition opposes in each particular the conclusions and characterizations set forth by the petitioners. ALPA contends that section 3 of the labor protective provisions of order E–16605, *supra*, was not intended to provide a forum for the rehearing by the Board of seniority claims previously heard in arbitration proceedings; that the reservation of jurisdiction by the Board in said order was intended to provide an opportunity to amend, modify, or add to the labor protective provisions should "difficulties * * * not foreseen" arise, but not for review of matters settled by agreement of the representatives of the employees and the carrier; that the petitioners were accorded their rights under the ALPA policy manual for the protection of their interests on questions relating to seniority integration; that the petiioners were offered an opportunity to participate as a party in the Cole arbitration which ruled on their seniority rights, but the petitioners refused to become a party in order to reserve an option to oppose the award; that nevertheless the petitioners participated in the hearing and acquainted the arbitrators fully regarding their views; that a representative member of the dissident professional flight engineers kept ALPA advised of their viewpoint; that on United the time served by flight engineers was never used to enable them to penetrate the seniority list above any established pilot; and that in any event the resolution of contested claims on issues of seniority by an impartial arbitration board acting under fair procedures should not be disturbed.

United in answer to the petition states that the seniority issues were resolved under union procedures by qualified and impartial arbitrators; that the lists arrived at as a result of the arbitration proceedings were accepted by United which believed them fair and equitable; that in the course of collective bargaining with the duly authorized bargaining agent, United found no basis for refusing to agree to accept the seniority list which had been arrived at by the internal procedures of the duly designated bargaining representative.

We have given careful consideration to the contentions of the parties and to the documentary evidence they have submitted, including the text of the Abrahams and Cole arbitration awards. The issue before us for resolution is whether the integration of the seniority lists of the United "professional" flight engineers with the other seniority lists of United-Capital was accomplished by procedures inconsistent with the requirements of section 3 of the labor protective provisions of the United-Capital merger order.[4] We find

[4] It is not contended that sec. 3 is inadequate or faulty. Indeed, the professional flight engineers rely on that section and do not request any modification of sec. 3 or any other section of the labor protective provisions.

no support in the pleadings before us for the relief petitioners request and we shall accordingly dismiss the petition.

The Board's policy with respect to the integration of seniority lists in merger cases has been laid down in a number of cases in which the Board has imposed labor protective provisions. That policy has been to charge the receiving company with the duty and responsibility of making provision for the integration of the seniority lists in a fair and equitable manner, utilizing when applicable the collective bargaining procedures contemplated by the Railway Labor Act. Although the Board has legal power to direct the precise manner in which the individual seniority lists should be merged, we have consistently taken the position that it is more desirable that this task be accomplished by those directly concerned, the employee groups and the carrier, either by agreement or arbitration.[5]

The reasons for this policy were stated in the *North Atlantic Route Transfer Case*, where we said: "It is clear to us that we should not undertake to determine the precise manner in which the individual seniority lists for the various categories of employees should be merged * * * Such a determination is dependent upon so many factors, and is of such a detailed nature that it would not be practical for an administrative agency such as the Board to undertake the task * * *."[6]

Manifestly, this statement is equally applicable to a detailed review of the manner in which the integration of seniority lists has been accomplished as it is to undertaking the task in the first place.

Consistent with the Board's policy, section 3 of the labor protective provisions in *United-Capital Merger Case supra*, provides for the integration of seniority lists in a fair and equitable manner, including, where applicable, "agreement through collective bargaining between the carriers and the representatives of the employees affected."[7]

ALPA, the NMB designated employee representative, and United negotiated such an agreement integrating the seniority lists. The petitioners in face of this compliance with the prescribed procedures base their request for Board intercession on the assertion (1) that United and ALPA have acted "in bad faith and in a deliberate effort to subvert an order of the Civil Aeronautics Board * * * by discriminatorily distinguishing between petitioners and all other members of the bargaining unit," and (2) that "ALPA has willfully failed to perform its statutory duty as a collective bargaining agent * * * fairly and without prejudice."

The factual allegations by the petitioners are completely lacking in any support for the conclusion that United engaged in an effort to "subvert" the merger order.[8] The seniority lists presented by ALPA to United were established under the ALPA Policy Manual (in existence before the controversy) and after arbitration before impartial arbitrators whose standing, skill, and integrity were and are unchallenged. We cannot accept the petitioners' contention that United was called upon to challenge the established procedures of the NMB desginated collective bargaining agent of the employees, or that it was improper for United to assume a posture of neutrality in the intra-union controversy or for United to enter into an agreement with ALPA accepting the integration list which had been arrived at as a result of the ALPA arbitration proceedings. In these circumstances we find no basis for challenging the propriety of United's action.

We are also unable to find that the petitioners have established that ALPA had willfully failed to perform its duty as collective bargaining agent. The petitioners' factual allegations in this regard are based principally on the contention that the ALPA Policy Manual procedures did not provide adequately for representation of a small minority in the union with a special interest. Whether this was the case we need not decide, for the simple fact

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[5] *Delta-C&S Seniority List*, 29 C.A.B. 1347 (1959), and cases therein cited; affirmed sub nom., *Outland* v. *C.A.B.*, 284 F.2d 224 (D.C. Cir. 1960).

[6] 12 CA.B. 124, 132–133 (1950).

[7] The provision in sec. 3 for arbitration between the labor representatives and the carrier is applicable only in the event of failure of the parties to agree.

[8] United as an air carrier subject to the Railway Labor Act is under a statutory duty to treat with the designated employee representative. As stated by the Supreme Court in *Virginian Ry.* v. *Federation*, 300 U.S. 515, 548 (1937), the carrier is under the affirmative duty "to treat only with the true representative, and hence the negative duty to treat with no other."

is that the union committees that were elected under ALPA procedures were unable to agree and did not dispose of the seniority issues affecting the petitioners. That question, under ALPA procedures, was submitted to arbitration. We consider it most significant in this connection that the "professional" flight engineers were invited by Arbitrator Cole to participate as a full party in the arbitration proceeding which the petitioners refused to do since they would thereby, in their view, be bound by the outcome. They chose instead to appear "specially" and to participate in a more limited fashion, through their counsel, by submitting written testimony and evidence.[9] The Cole arbitration award of August 1962 gave consideration to the contentions of the professional flight engineers. The election by the petitioners to refrain from being a full party and the fact that the outcome of the arbitration was disappointing to them does not derogate from the fairness of the procedures. It is significant that there is no allegation that the arbitration proceedings were otherwise improperly conducted.

In sum, upon a consideration of the pleadings submitted by the petitioners we find no basis for concluding that the seniority lists in question were not integrated in a fair and equitable manner in conformity with the requirements of section 3 of the labor protective provisions of the United-Capital merger order. Where, as here, the carrier and the duly certified representative of the petitioners reached agreement by collective bargaining procedures on a seniority list, and where, as here, the agreement itself conforms to the list resulting from the decision of impartial arbitrators, we find no basis for reopening of the record of this case. Accordingly,

IT IS HEREBY ORDERED, That the petition of the 238 "second officers" of United in docket 11699 filed November 27, 1963, be and it hereby is dismissed.

[9] Transcript of hearing before Arbitrator David L. Cole, May 14, 1962, pp. 39–40 (quoted p. 7 of statement of ALPA).

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W.T.C. AIR FREIGHT AIRWAYBILL REQUIREMENTS—orders E–20757 and order E–20601.

ORDER E–20757 ISSUED APRIL 28, 1964

Airfreight forwarder operating authorization 36 and international airfreight forwarder operating authorization 153 were issued to Western Transportation Co., Inc., d/b/a W.T.C. Air Freight (Western) on September 28, 1956, and February 8, 1961, respectively.

Applications for airfreight forwarder and international airfreight forwarder operating authorizations were filed on March 20, 1964, by WTC Air Freight (WTC), a subsidiary of Western (which is to own 80 percent of WTC's stock). Western is transferring its airfreight forwarding business to the newly formed WTC [1], which will immediately resume the operations conducted heretofore by Western (under operating authorizations 36 and 153 which have been tendered to the Board for cancellation).

Applications for approval of control and interlocking relationships were filed in docket 15095 on March 20, 1964. On April 16, 1964, the Chief, Routes and Agreements Division, Bureau of Economic Regulation, issued order E–20713 approving said relationships, under authority delegated by the Board (14 C.F.R. 385). Airfreight forwarder operating authorization 86 and international airfreight forwarder operating authorization 184 were issued to WTC on April 28, 1964, effective April 28, 1964.

In applying for airfreight forwarding authority, WTC also sought authorization to use the name "Coast Air Post" in connection with "air post" shipments only. (By order E–20601, issued March 23, 1964, *infra*, Western was so authorized, and was also granted permission to deviate from the airwaybill requirements in performing said "air post" service. Subject to certain conditions, Western's use of the name "Coast Air Post" and the use of a document known as an air post manifest in lieu of an airwaybill, in its "air post" service was found by order E–20601 not to be contrary to the public interest. WTC proposes to continue the operations heretofore conducted by Western. Therefore, pursuant to authority delegated by the Board in its regulations (14 C.F.R. 385), and, acting pursuant to parts 215 and 296 of the Board's Economic Regulations, upon consideration of all the relevant facts, it is found that WTC's use of the name "Coast Air Post" in connection with airfreight for-

[1] WTC's application represents that it was incorporated in California on Mar. 13, 1964.