Exhibit E

Finally, the exceptions Emery would urge to the Board have been duplicated by other parties, and its opposition to an increase in the scope and amount of direct air carrier liability and a change in the burden of proof respecting packaging will be adequately represented by existing parties.[3] Accordingly,

IT IS ORDERED, that the above-described motion for leave to file an otherwise unauthorized document is denied and the petition for leave to intervene is not accepted for filing.

[3] We also note that the liability and claims rules and practices of direct air carriers are in issue but the rules and practices of indirect carriers are not, and the latter would not be "predetermined" by the decision in the instant case.

DOCKET 23315, DELTA AIR LINES, EMPLOYEE INTEGRATION—order 73-9-42 adopted September 11, 1973.

By orders 72-5-73/72-5-74 served May 19, 1972 (59 C.A.B. 608), the Board approved the merger of Delta Air Lines and Northeast Airlines, Inc., subject to Allegheny-Mohawk type labor protective provisions (see *Allegheny-Mohawk Merger*, 59 C.A.B. 19, 45 (1972)), with certain modifications not here relevant. Section 3 of those provisions reads as follows:

> 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.

Section 13 of the provisions provides for the arbitration of any dispute or controversy that arises with respect to the labor protective conditions. The Board also, in accordance with its customary practice, reserved jurisdiction "to make such amendments, modifications, and additions to the labor protective conditions * * * as the circumstances may require." In reliance on this reserved jurisdiction and on the terms of sections 3 and 13 of the labor protective conditions, the Transport Workers Union of America, AFL-CIO ("TWU") filed a petition requesting that the Board (1) order arbitration pursuant to section 13 of the labor protective provisions to determine the fair and equitable integration of clerical and stewardess seniority lists of the two carriers and (2) require Delta to provide interim protection to the employees pending resolution of the dispute by recognizing the seniority status of all former Northeast employees as it existed on November 30, 1972. An answer in opposition to the petition has been filed by Delta.[1]

This dispute arises from efforts to integrate seniority lists for the two classes of employees in question. A first meeting was held on July 11, 1972, prior to consummation of the merger on August 1, 1972, among representatives of the two carriers and the TWU. At that meeting it was decided that further discussions among those present would be held concerning the clericals and that a TWU Northeast stewardess committee would meet with a Delta stewardess committee. The stewardess negotiations ended in deadlock after approximately 2 months, and counsel for the TWU notified Delta of its intention to arbitrate the dispute. At about the same time the union requested the National Mediation Board (NMB) to furnish a panel of names from which the parties might select an arbitrator. On October 31 Delta informed all of the stewardesses that because of the impasse it would be necessary for the carrier to integrate the seniority lists unilaterally. Meanwhile, the TWU had made several requests to Delta for a seniority list for the Delta clericals as a first step toward integrating lists for that class of employees. Having failed to receive such a list, the TWU notified the NMB on August 29, 1972, that it wished to refer the matter to an arbitrator. Delta opposed both this request and the TWU request made in connection with the stewardess negotiations. On November 2 the NMB submitted to the parties two panels of names. However Delta has refused to arbitrate, denying any obligation on its part to do so.

In support of its petition the TWU alleges that it has sought to reach a satisfactory

[1] The TWU represented Northeast stewardess and clerical personnel prior to the merger. Delta's stewardess and clerical employees are not represented by a labor organization.

agreement with Delta, pursuant to the Board's order, as to the seniority rights of the former Northeast clericals and stewardesses; that Delta has refused to engage in good faith negotiations, has refused to arbitrate the dispute, and intends to integrate the lists unilaterally by a method considered unfair and unreasonable by the TWU and the former Northeast employees; that the TWU as a "party" to the merger proceeding is entitled to refer these disputes to arbitration under section 13; that a claim by Delta that the TWU must prove its representative status is without precedent; that further it is impossible for the TWU to prove its representative status because the NMB, the only agency with authority to certify representation, would not determine a representative for the ex-Northeast employees since they now constitute only a portion of a "craft or class"; and that the TWU is the only proper representative of the employees in question.

In its answer, Delta asserts that, despite Delta's statements that it would meet with TWU representatives if the TWU showed any evidence that it in fact represents the former Northeast employees under the labor protective provisions, the TWU has made no such showing and that neither the TWU's status as a party in the merger case nor its status as a former representative of the former Northeast employees under the Railway Labor Act in any way gives it the right to invoke arbitration. The carrier further states that the stewardess lists have been integrated in a fair and equitable manner in accordance with section 3 of the labor protective provisions; that it has not received a formal complaint from a single former Northeast employee with respect to seniority integration; that it dealt with a group of Northeast stewardess representatives in negotiations and was then requested to arbitrate with the TWU, which had not participated in the negotiations; and that Delta is ready to submit to arbitration if it is invoked by dissatisfied employees. With respect to the clerical employees, Delta additionally argues that integration of seniority lists is unnecessary and inappropriate since seniority is not the controlling factor in determining job opportunities for those employees; to the extent that Delta does use seniority, it is based on date of hire and reference is merely made to personnel records.[2] Therefore, to the extent of its use, seniority was automatically integrated upon consummation of the merger. Finally, since the TWU is not entitled to the primary relief sought, Delta contends that "interim" relief pending arbitration is inappropriate.[3]

On May 21, 1973, the TWU filed a petition for permission to file an extraordinary document which purports to refute various assertions made by Delta in its answer to the TWU's original petition and reiterates the TWU's request that the Board issue an order requiring Delta and the TWU to select an arbitrator to determine integration of the seniority lists of the Delta and Northeast clericals and stewardesses and that the Board order interim relief. Appended to this pleading are letters from former Northeast stewardesses now employed by Delta that, the TWU alleges, show that the stewardesses are dissatisfied with the integrated seniority list and look to the TWU for help.

On July 2, 1973, Delta filed a motion for leave to file an unauthorized document with its answer to the TWU's May 21 filing.[4] In its answer, Delta states that it still has not had a request from any former Northeast stewardess or clerical employees for arbitration of a seniority problem; that the TWU has not informed Delta of any authorization to represent any former Northeast employees in seniority matters; that the Board should reject TWU's petition on the grounds that no dispute has been properly submitted to Delta for arbitration within a reasonable period of time after the dispute arose; that the TWU's answer did not refute any of Delta's arguments with respect to the agent/clericals group; and that the Board should not look with favor upon the TWU's attempts to use the labor protective provisions to perpetuate its representation of various former Northeast Airlines' employees.

We will dismiss the TWU petition on the alternate grounds that (1) no showing has been made which warrants intervention on the Board's part and (2) TWU is not a "representative" of the former Northeast employees for the purposes of invoking the provisions

[2] Thus, Delta claims, compliance with TWU's request would have required that Delta construct a seniority list for that class of employees.

[3] Delta contends that interim relief would be inappropriate since the grant of such relief would impinge upon Delta's ability to conduct its operations and since the TWU has made no showing of irreparable injury (citing *American-Trans Caribbean Merger*, 57 C.A.B. 581 (1971)).

[4] We will grant both the TWU's supplemental petition and Delta's motion for leave to file an unauthorized document.

for arbitration contained in our labor protective provisions merely because it was the collective bargaining representative of those employees prior to the merger.

The Board has heretofore noted that it lacks expertise in labor matters, that it is not charged with responsibility to act as a labor board for the aviation industry, and that its limited resources are more appropriately directed to the resolution of those tasks directly assigned to it and with which it is familiar. See *American Airlines, Inc.* v. *C. A. B.*, 445 F.2d 891 (2d Cir., 1971), cert. denied, 92 S. Ct. 681 (1972); and *Outland* v. *C. A. B.*, 284 F.2d 224 (D.C. Cir., 1960). Indeed, the requirement for arbitration of disputes between employees and carriers concerning the application of our labor protective conditions is grounded upon these premises. See *American-Trans Caribbean Merger, supra* at 585–586; *American Airlines, Inc.* v. *C. A. B., supra*. For the same reasons, the Board has stated that it should not intervene to order arbitration where arbitration can be directed by a court with authority to enforce its decree and that the more appropriate enforcement action by the Board is penalty action against a carrier for violation of the requirement to arbitrate. See *American-Trans Caribbean Merger, Labor Protective Provisions*, 60 C.A.B. 835, 838–839 (1972) (petition of James Matthiesen).

We recognize that the present dispute involves issues other than a failure by a carrier to comply with the terms of the Board's prior order. Nonetheless, the plain purport of our prior holdings has been that disputes capable of resolution through negotiation or arbitration without recourse to the Board should be settled in that manner. Here, Delta has conceded, at least initially, that it is under a duty to arbitrate any unresolved seniority issue upon demand of any dissatisfied former Northeast employee or group of employees, and in our view that obligation is clear. Moreover, TWU asserts that it has in fact been requested by former Northeast employees to act in their behalf. Thus, TWU may ultimately obtain arbitration if it presents evidence to Delta of authority to represent former Northeast employees and if the dispute is not otherwise resolved. In these circumstances, we fail to perceive any duty on our part to direct that which TWU may obtain through its own efforts.[5]

Further, if it be thought that the Board should determine whether TWU is the present "representative" of the former Northeast employees within the meaning of this term as used in section 3 of the labor protective conditions solely on the basis of its status as their collective bargaining representative when they were employed by Northeast, our determination is that it is not.[6] We need not reach the question of whether, if an agreement between TWU and Delta had been negotiated or consummated prior to the merger, TWU would have had standing to complain of any breach (as opposed to being required to show that it was authorized to act by employee beneficiaries of the agreement). No such agreement was in fact reached, and it does not appear that TWU's status as collective bargaining representative of the Northeast employees for Railway Labor Act purposes survived the merger (see *Air Line Employees Ass'n* v. *Civil Aeronautics Board*, 413 F.2d 1092 (D.C. Cir. 1969)). Moreover, a continuation of representative status is not essential to the application and enforcement of the labor protective conditions.

In these circumstances, no persuasive reason has been advanced as to why TWU should be deemed to represent the former Northeast employees merely because it was their former representative. Such automatic status is not required either for the purpose of enabling employees to avail themselves of the Board's labor protective provisions or to enable the former bargaining representative to represent the employees if the employees so desire. On the other hand, significant changes in employer-employee relations resulting from a merger can result in different interests between a union and its former members so

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[5] In its answer to the TWU's supplemental petition, Delta raises the argument that the former Northeast employees should not be granted relief, in any event, since they have not filed a complaint against the integrated seniority list within a reasonable time. This question, as well as such questions as the impact to be given in a sec. 3 dispute to the fact that a relatively small number of employees are dissatisfied with the manner in which the seniority lists were integrated (if that is in fact the case) and the applicability of the seniority integration provisions of sec. 3 to Delta's clerical employees, are appropriate matters for resolution in the context of negotiation or an arbitration proceeding, and accordingly, we do not decide them here.

[6] TWU's argument that it has a right to invoke arbitration under sec. 13(a) by reason of its status as a party to the merger proceeding is not persuasive. Clearly, from the context of that section, its reference to "any party" was intended to encompass only parties to the particular dispute in question.

that the employees would not necessarily want the union to represent them for labor protective purposes. Moreover, the Board has recognized that every group of employees affected by negotiations under these provisions is entitled to separate representation that will protect the group's interest (see *American-Trans Carribbean Merger, supra* at 586, n. 10; *Braniff-Mid-Continent Merger Case*, 17 C.A.B. 19 (1953)). It can be argued, of course, that recognition of the union as a continuing "representative" for purposes of section 3 will not defeat any right of employees not desiring such representation since they may be represented by someone else. However, there is no showing that this course of action will promote stability in labor relations. Indeed, such stability might be better advanced if the shoe is on the other foot. Accordingly,

IT IS ORDERED—

1. That the petition of the Transport Workers Union of America, AFL-CIO, for exercise of reserved jurisdiction be and it hereby is dismissed;
2. That the petition of the Transport Workers Union for leave to file an extraordinary document be and it hereby is granted;
3. That the motion of Delta Air Lines, Inc., for leave to file an unauthorized document be and it hereby is granted.

Murphy, Member, filed the attached dissent.

MURPHY, *Member*, dissenting:

The petition and related pleadings herein raise a close question. I am persuaded, however, that the TWU has effectively demonstrated that it represents certain Delta stewardesses formerly employed by Northeast Airlines for purposes of requesting arbitration. Letters attached to the petition filed by TWU on May 21, 1973, show that several former Northeast stewardesses are dissatisfied with the manner with which the seniority rosters were integrated and look to the TWU for assistance. It is true the letters do not in formal terms designate TWU as representative of these stewardesses, but that is the fair purport of the letters. To hold otherwise, in my view, elevates form over substance. Aggrieved employees, no matter how small their number, may select whomever they choose as their designee to secure their rights under the labor protective conditions. These stewardesses have selected TWU, and I believe that selection should be honored.

The Board could, as the majority suggests, leave TWU and the stewardesses to seek a court order directing arbitration. However, we also have the power under our reserved jurisdiction to order arbitration. To issue such an order would be a simple matter for the Board and would not involve us in labor matters beyond our competence. I believe stability of labor relations would be fostered by this action. If the complaints of these few stewardesses are groundless, the arbitrator will so find and Delta will not be injured. In fairness, therefore, the Board, as a matter of discretion, should grant TWU's petition.

DOCKET 24631, AGREEMENT CAB 239, NATC JOINT-FARES PROPOSAL—order 73-9-44 adopted September 11, 1973.

By a petition filed July 24, 1972, certain members[1] of the National Air Transportation Conferences, Inc. (NATC), request the institution of an investigation and the issuance of an order directing all domestic certificated and commuter air carriers to show cause why joint fares should not be established between any pair of points within the 48 contiguous States and the District of Columbia involving through transportation over the combined routes of any one or more of such certificated and commuter air carriers. NATC asks that the joint fares be consistent with the Board's decision in *Domestic Passenger-Fare Investigation*, printed in CAB DPFI volume, page 75.[2] In general, NATC requests that these joint fares be computed on the same basis as the Board determined to be lawful in Phase 4, i.e., the sum of the existing local fares less $4.

[1] Air Midwest, Air New England, Air North, Inc., Air Wisconsin, Inc., Bar Harbor Airways, Command Airways, Cross Sound Commuter Airlines, Downeast Airlines, Inc., Executive Airlines. Inc., Gilley Airways, Corp., Gulf Coast Aviation, Inc., MATS Airlines, Inc., Metroflight Airlines, Inc., SMB Stage Lines, Inc., Skyway Aviation, Inc., Suburban Airlines, Universal Enterprises, Inc., and E. W. Wiggins Airways, Inc.

[2] Phase 4, order 72-4-42, Apr. 10, 1972.