

# Exhibit F

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Order 82-3-63

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.



Adopted by the Civil Aeronautics Board  
at its office in Washington, D.C.,  
on the 13th day of August, 1982

National Acquisition, Unions'  
Arbitration Petitions

Dockets 39974  
40033

ORDER

This proceeding arises out of the Pan American-National merger approved by the Board and consummated on January 19, 1930, subject to implementation of labor protective provisions (LPP's) (Orders 79-12-163/164/165). Before the Board are two requests for arbitration of seniority disputes which invoke our retained jurisdiction over sections 3 and 13(a) of the LPP's. 1/ The petitions were filed by two unions on behalf of two groups of former National employees now employed by Pan American, the station agents and the stock clerks. The petitions' purpose is to reestablish the seniority rights these workers had at National in the cleaner and ramp agent job classifications. Since the petitions have shown that there is a dispute over seniority rights which resulted from the Pan American-National merger, the dispute appears to be covered by the LPP's. We will therefore grant the requests for arbitration of the dispute. In doing so, of course, we have determined only that the petitioners are entitled to arbitration, not that they should be awarded any of the relief they seek. 2/

1/ "Section 3. 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(a). In the event that any dispute or controversy \* \* \* arises with respect to the protections provided herein, which cannot be settled by the parties within 20 days after the controversy arises, it may be referred by any party to an arbitrator \* \* \*. The decision of the arbitrator shall be final and binding on the parties."

2/ Each of the parties filed one or more replies not authorized by the Board's rules and motions for leave to file unauthorized documents. We will grant the motions.

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Under the Railway Labor Act, the National Mediation Board (NMB) has exclusive jurisdiction to determine class or craft composition for airline employee bargaining units and representational rights. At National, the NMB had sanctioned a class or craft unit composed of, among other things, the job classifications of cleaner and stock clerk, which was represented by International Association of Machinists and Aerospace Workers (IAM). A second class or craft unit at National consisted of the classifications of station agent and ramp agent and was represented by Air Line Employees Association (ALEA). Pursuant to collective-bargaining agreements between National and the unions, IAM cleaners and stock clerks could work in either position and accrue separate seniority for each. The same was true for ALEA station and ramp agents. Consequently, for example, National stock clerks with cleaner seniority or station agents with ramp agent seniority could bid for the latter positions on the basis of this separately maintained seniority if laid off as stock clerks or station agents. In doing so, they would not cross National's established unit class or craft lines, or come under the aegis of another union representative.

This situation changed after National's merger with Pan Am, for at Pan Am the Transport Workers Union of America, AFL-CIO (TWU) represented a unit containing cleaners and ramp agents, and the International Brotherhood of Teamsters, Airline Division (IBT) represented a unit of stock clerks and station agents. Their contracts with Pan American would not permit TWU cleaners and IBT stock clerks, or TWU ramp agents and IBT station agents, respectively to exchange jobs and hold dual seniority as the employees' counterparts had done at National.

After the merger, the NMB ruled that Pan American's premerger bargaining structure, as opposed to National's, should prevail at the combined carrier. In order to conform to Pan American's job classifications for bargaining units, former National cleaners/stock clerks and ramp/station agents were assigned to one of their two job classifications according to their predominant duties at National. They were placed in one of Pan American's class and craft bargaining units which did not include their other National job classification. The stock clerks, for example, no longer shared a bargaining unit with the cleaners and instead were combined with the station agents. The National employees also became represented by a new collective-bargaining agent, either TWU or IBT. These unions then bargained with Pan American, as required by section 3 of the LPP's, about integrated seniority for each of the combined National and Pan American classes and crafts. <sup>3/</sup>

<sup>3/</sup> Both TWU's and IBT's seniority agreements with Pan American were not resolved without difficulty. A group of former National mechanics, calling themselves "Maintenance Legal Aid Committee" (MLAC), disputed the TWU agreement on the ground that it constructed an integrated list by date-of-hire instead of by a rank-ratio method. (Mechanics are a job classification also included in the TWU Pan American unit with cleaners and ramp agents.) Pan American and TWU voluntarily consented to arbitrate the issue with MLAC under section 13(a) of the LPP's. On December 17, 1981, Arbitrator David H. Stowe issued an award upholding the date-of-hire integration as appropriate under section 3. (A petition to vacate the award, filed by employees Billy J. Williams, Pedro L. Contreras, Harrell D. Scott, and Kenneth F. King, is pending at the Board in Docket 40407.)

The IBT seniority integration agreement with Pan American resulted from mediation conducted by Former Secretary of Labor William J. Usery, Jr. This agreement was challenged before the Board by some 150 former National employees calling themselves "Pan American In National" (P.A.I.N.). By Order 92-3-16, served March 2, 1982, we held, among other things, that P.A.I.N. failed to show that the interests of its members had not been fairly represented by IBT in agreeing to a date-of-hire seniority list for the unit. We accordingly dismissed their petitions, a decision for which they are seeking judicial review, P.A.I.N. v. CAB, D.C. Cir. No. 82-1496 (filed May 3, 1982).

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The petitions filed by IAM and IBT seek to reestablish for a period of time the seniority rights that National's stock clerks and station agents had, respectively, in the cleaner and ramp agent job classifications. The IAM petition is filed on behalf of the stock clerks, employees who had been represented by IAM at National, and the IBT petition is filed on behalf of the station agents, who are now represented by IBT.

IAM claims arbitration is required because there has been no "fair and equitable" integration of the stock clerks' seniority, since many of the National stock clerks held seniority rights in other job classifications which were not preserved by the integrated seniority list agreed to by Pan Am and TWU. IAM argues, moreover, that some of the stock clerks have been injured as a result, for they were laid off from their stock clerk jobs without being able to use the seniority rights they had accrued as cleaners at National. IAM concludes that the stock clerks' claim comes within the scope of the LPP's and must therefore be arbitrated. IBT similarly argues that the Board must order an arbitration of the seniority dispute involving the station agents now represented by IBT and the ramp agents now represented by TWU.<sup>4/</sup> Both IAM and IBT state that Pan American and TWU at one time were willing to arbitrate these claims with IBT and IAM, but not under the LPP's. IBT and IAM, therefore, have petitioned for orders directing arbitration under the LPP's.

Pan American and TWU oppose LPP arbitration. They point out that IBT and IAM do not allege that the integrated list for the TWU cleaner-ramp agent unit (or the IBT stock clerk-station agent unit) in itself violates the LPP's. Instead, Pan American and TWU contend that by these claims IBT and IAM are attempting to circumvent the NMB's exclusive authority to specify class or craft bargaining units and representational rights at merged Pan American. They contend that allowing former National stock clerks and station agents, now in IBT's Pan American unit, to claim residual cleaner and ramp agent seniority in TWU's unit -- the relief sought here by petitioners -- means that these employees would cross class or craft lines contrary to the NMB's express ruling maintaining Pan American's premerger collective-bargaining structure. Thus Pan American and TWU essentially argue that the Board has no authority under the LPP's to authorize employee movement back and forth between classes or crafts which are represented by different labor organizations. Pan Am and TWU filed further pleadings contending that the seniority integration of the employees involved had already been resolved through arbitration proceedings. They cited Order 82-3-16 (March 4, 1982), dismissing a challenge to the integrated seniority list negotiated by Pan Am and IBT, and the arbitration of the seniority dispute among the employees represented by TWU. IAM and IBT filed replies contending that they had no intention of challenging the NMB's decision and that the other arbitration and negotiation proceedings cited by Pan American and TWU did not foreclose the arbitration of the seniority rights claimed by the stock clerks and station agents.

<sup>4/</sup> IBT has not objected to IAM's continuing representation of former National stock clerks in this regard and has stated its agreement to a consolidated arbitral proceeding, with Pan American and TWU, of the station-ramp agent and stock clerk disputes. We note that no union has raised the dual seniority matter on behalf of former National cleaners at Pan American who are now in TWU's unit. While these employees have been credited, at Pan American, for their accrued National stock clerk seniority as part of their total unit seniority, there is no express contention to us that they should be entitled to exercise their National stock clerk seniority in IBT's Pan American stock clerk unit. Presumably, however, if stock clerks could bid into the cleaner unit, the same should be true for cleaners in the stock clerk unit.

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In considering petitions for arbitration filed under section 3 of the LPP's, we do not attempt to decide the merits of the claim. Section 3 states that an arbitration should be held if there is a dispute among the carrier and the labor representatives over the fairness of the seniority integration of the merged carrier's employees. Under this standard we have concluded that the petitions for arbitration of IAM and IBT should be granted. Their claims do involve a seniority dispute which was the direct result of the Pan American-National merger and therefore falls within the scope of the LPP's. TWU and IBT assert that seniority for some of the employees who held two classifications at National (the station agents, ramp agents, and stock clerks) has yet to be credited to them as integrated Pan American seniority. In their view, accordingly, the existing seniority integration agreements between Pan American, TWU and IBT have not completely resolved the seniority issues in a "fair and equitable" manner.

Pan American and TWU argue that the relief sought by IAM and IBT would constitute an attack on Pan American's craft and representational bargaining structure approved by the NMB. Clearly, the solution to the dispute favored by petitioners, namely, allowing station agents, ramp agents, and stock clerks to temporarily exercise their residual National seniority for their second former job classification at Pan American, might mean that these employees, for a limited time, would move between bargaining units. But this circumstance does not, in our opinion, so clearly violate the NMB's order as to require our dismissal of the petitions for arbitration.<sup>5</sup> We prefer to have the arbitrator resolve this issue, particularly since the arbitrator will be more experienced in labor law matters than we are. Our preference for having the arbitrator resolve this issue is fully consistent with the reasoning of the Court of Appeals in its recent decision in Pan American World Airways v. CAB, D.C. Cir. No. 81-1963 (decided July 23, 1992). The Court, quoting Air Line Employees Ass'n v. CAB, 413 F.2d 1092, 1095 (D.C. Cir. 1969), pointed out that the Board's imposition of LPP's has not transformed us into a labor board "bound to pass on every question of labor law which might arise out of a merger," and, citing American Airlines v. CAB, 445 F.2d 891, 895 (2d. Cir. 1971), cert. denied, 404 U.S. 1015, held that we "may properly decide that [our] scarce resources should be husbanded for the tasks for which [we] consider [ourselves] to be expert, rather than frittered away in an area more suitable for an experienced labor arbitrator." The Court accordingly concluded that "the Board is fully entitled -- and indeed expected -- to rely on the expertise of an arbitrator to settle disputes that at least arguably arise under the LPP's" (slip op., pp. 9-10). This analysis by the Court fully supports our decision to have the arbitrator rule on the claims by Pan American and TWU that the claims made by IAM and IBT would violate the NMB's decision.

<sup>5</sup>/ Pan American acknowledged that the craft structure established by the NMB could have created some anomalies for National employees. On the other hand, the IBT integrated seniority list calculates the seniority for the former National stock clerks and station agents entirely on the basis of their seniority in these classifications and excludes any seniority they may have gotten in any other job classification. On the surface this seems inconsistent with IBT's claim that TWU must recognize the station agents' seniority as ramp agents.

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We conclude as well that the establishment of integrated seniority lists for the employees within the TWU and IBT units also does not preclude the holding of an arbitration proceeding. We doubt that the establishment of those lists necessarily cut off the claims now made by IAM and IBT. Pan American and TWU are, of course, free to argue that the resolution of the seniority lists within each unit would make it unfair and inequitable to give the station agents and stock clerks seniority rights in the ramp agent/cleaner job classification.

The only difficulty raised in our minds by this proceeding is IAM's standing to pursue LPP arbitration for employees now represented by another union at the merged carrier. However, since that union, IBT, fully acquiesces in IAM's participation in the seniority dispute, we accord it party status in the LPP arbitration now ordered.

Since the arbitration petitions involve common issues and no party opposes consolidation, we will consolidate the petitions.

ACCORDINGLY,

1. We consolidate and grant the petitions of International Association of Machinists and Aerospace Workers and International Brotherhood of Teamsters, Airline Division for orders directing arbitration under the labor protective provisions in Pan American-Acquisition Of Control Of And Merger With National, Docket 33283;

2. We order Pan American World Airway, Inc., and Transport Workers Union of America, AFL-CIO, within 30 days of the date of service of this order, to participate with petitioners, jointly, in the selection of an arbitrator pursuant to section 13(a) of the labor protective provisions for the purpose of arbitrating the claims set forth in the petitions. The arbitration shall be conducted in conformance with section 13(a) of the labor protective provisions: Provided, however, that nothing in this order shall preclude the parties, jointly, from agreeing to proceed pursuant to section 13(b) of the labor protective provisions within the 30-day period;

3. We order the determination of the arbitrator to be final and binding on the parties to the arbitration;

4. We order Pan American World Airways, Inc., upon receipt of the arbitrator's award to file two copies of the award in C.A.B. Dockets 33283, 35974, and 40033, respectively; and

5. We retain jurisdiction to take such action as may be necessary or appropriate in the public interest.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR  
Secretary

(SEAL)

All Members concurred.