Exhibit G

Order 82-4-75

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 15th day of April, 1982

National Airlines Acquisition, Arbitration	Docket 33283

ORDER DISMISSING MOTION AND PETITIONS

This proceeding arises out of Pan American World Airways' acquisition of control of and merger with National Airlines, effective January 19, 1980, which the Board approved by Orders 79-12-163/164/165. Before the Board are three requests concerning an arbitration award which resolved disputes among National and Pan American flight engineers and pilots about their integrated seniority at the combined carrier, Pan American. The award established, from the employees' standpoint, two integrated seniority lists for the merged employee groups. When the lists were presented to Pan American by the employees' bargaining representatives, the carrier accepted and implemented them. 1/

1/ The Flight Engineers' International Association ("FEIA") was the certified collective-bargaining agent, under the Railway Labor Act, for flight engineers at National and Pan American through its respective airline chapters. The Air Line Pilots Association, International ("ALPA"), through its master executive councils at each airline, was the agent for the carriers' pilots. Such agents are the appropriate representatives of employees affected by an acquisition or merger for purposes of bargaining with the combined carrier about integrated seniority. These four labor representatives (herein called National Engineers, Pan Am Engineers, National Pilots, and Pan Am Pilots) were the parties to the arbitration in issue.

Flight engineers formerly employed by National, apparently sponsored by National Engineers, have filed a "Motion for Confirmation and Enforcement of [the] Arbitration Award." Petitions to set aside the award have been filed by (1) Janus Group, a group formed at the time of approval proceedings before the Board to represent 510 furloughed (premerged) Pan American crewmen; and (2) Pan American Pilots Fighting ("PAPF"), a group of unidentified (premerged) Pan American crewmen who joined together after the arbitration award issued to oppose it.

Our jurisdiction to consider the requests stems from section 408 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §1378, which subjects air carrier acquisitions and mergers to Board approval upon terms and conditions that are just and reasonable. In following this mandate, we impose and retain jurisdiction over labor protective provisions ("LPP's") benefiting employees at combining companies in certain ways. The basis for the relief sought in the motion and petitions would be, therefore, that merged Pan American and the bargaining representatives for flight deck personnel at premerged National and Pan American failed to integrate seniority as required by the LPP's in our approval order which provide that,

> 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.

We have long held that, pursuant to section 3, the surviving carrier of an acquisition or merger and the affected employees (by their representatives in terms of the Railway Labor Act if they are organized) are responsible for integrating seniority lists. Only when the carrier and the employees/representatives disagree on seniority do we intrude, by ensuring that the parties arbitrate.

> 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.

Here, the four representatives for cockpit crew members affected by the acquisition agreed to a procedure for determining, among themselves, how to integrate seniority. The procedure required final and binding arbitration if they could not decide upon an integrated seniority proposal to submit to Pan American. The procedure also required that the representatives jointly support, in collective bargaining with the company, the proposal thus formulated. Nevertheless, we are presented with a claim by National Engineers that Pan Am Engineers refuses to support the lists established in the intra-union arbitration because Pan Am Engineers disagrees with how the award deals with certain aspects of its members' seniority. National Engineers states that Pan Am Engineers, instead, tried to negotiate seniority for its members with Pan

American by asking the company to change the award and implement lists at variance with it. Failing Pan American's acceptance of the proposal, Pan Am Engineers asked the company to arbitrate flight deck personnel seniority under section 13(a) of the LPP's. After the National Engineers' motion was filed, however, Pan American refused to bargain separately with Pan Am Engineers. Pan American acknowledged the intra-union procedural agreement and Pan Am Engineers' commitment to abide by the arbitration award as the integration proposal on behalf of all crewmen. Pan American decided to accept, unchanged, the lists developed by the award. Although Pan Am Engineers has again asked Pan American to arbitrate integrated seniority, for reasons more fully explained below, we are satisfied that Pan American, in this case, fulfilled its duty pursuant to the LPP's to integrate flight engineer and pilot seniority fairly and equitably. There is, accordingly, no necessity for ruling on National Engineers' motion to confirm and enforce the arbitration award. We dismiss the motion as moot.

We dismiss the petitions to set the arbitration award aside. Janus Group and PAPF speak for certain former Pan American crewmen dissatisfied with the substance of the award. These employees contend that, because the award's seniority lists are unfair and inequitable to them, it must be invalidated. They contend that, in order to comply with section 3 of the LPP's, their spokesman, along with the four certified bargaining representatives for Pan American and National crewmen, must bargain anew with Pan American about integrated seniority and, if necessary, arbitrate the matter under LPP section 13(a). Our authority, however, over arbitration voluntarily undertaken by employee representatives in connection with a Board-approved acquisition or merger "is confined to examining whether the arbitration was fairly and equitably conducted." Furthermore, "an employee is bound by the resolution of seniority and other disputes by his authorized bargaining representative in negotiations or binding arbitration, unless the employee can show that the resolution was tainted by the union's breach of its duty of fair representation." 2/ We find below that Janus Group and PAFP have not shown that the procedure used by their members' certified bargaining representatives was defective or that the representatives breached their duty of fair representation of Janus Group and PAPF members.

* * *

2/ Allegheny-Mohawk Merger Case (Complaint of Kingston and Foster), Order 79-11-53 at 17, aff'd sub nom. Kingston, et al. v. CAB, No. 80-1028 (D.C. Cir., decided without opinion March 6, 1981).

Based on the record before us, 3/ we find that:

The seniority procedural agreement signed by National Engineers, Pan Am Engineers, National Pilots, and Pan Am Pilots. On March 19, 1980, following Pan American's merger with National on January 19, 1980, the four labor organizations representing the carriers' flight engineers and pilots agreed to a procedure that they would use to determine integrated seniority. Pan American was not a party to the agreement since its purpose was to produce the proposal for seniority integration that the union representatives would advance in collective bargaining with Pan American as required by LPP section 3. 4/

3/ Numerous pleadings from parties affected by the pilot-flight engineer problem at Pan American were filed in this case. We docket and entertain all filings received on or before September 3, 1981. Accordingly, the motions received by September 3 for leave to file otherwise unauthorized documents pursuant to Rule 4(f) of our Procedural Regulations, 14 C.F.R. §302.4(f), are granted.

We grant PAPF's request on July 13, 1981, for confidential treatment under Rule 39, 14 C.F.R. §302.39, of portions of the text and Exhibits B through L of PAPF's petition to set aside the arbitration award filed the same date. The material contains facts about named employees' seniority. We do not rely upon this information in ruling on PAPF's petition; therefore, its disclosure to the parties in the proceeding or the public is unnecessary. The material will be returned to PAPF after the instant order issues.

We deny Pan Am Engineers' motion filed April 30, 1981, to strike National Engineers' motion for confirmation and enforcement of the arbitration award. We deny Pan American's motion filed August 7, 1981, for expedited action.

4/ The labor parties referred to the procedural agreement as complying with section 13(b) of the LPP's (introductory paragraph 2). They are mistaken. Section 13(b) reads,

> (b) The above condition [in (a) for arbitration] shall not apply if the parties by mutual agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in their particular dispute. No party shall be excused from complying with the above condition by reason of having suggested an alternative method or procedure, unless and until that alternative method or procedure shall have been agreed to by all the parties.

We have held that this provision means exactly what it says. North Central-Southern Merger Case (Petition of IAM), Order 81-6-56 at 3. It permits an "alternative method" to arbitration as settlement for a "particular dispute" arising out of seniority bargaining between a carrier and employees/representatives under section 3, when "the parties" to the dispute mutually agree to the alternative. Section 13(b) is not relevant to how the representatives of employees affected by an acquisition or merger decide to settle their internal disagreements about LPP seniority matters prior to bargaining with the carrier. See also n.12, infra.

The procedure called for negotiation by the union parties, who had "complete and full authority to act for and in behalf of their respective employee groups for the purpose of integrating the seniority lists of pilots and flight engineers" (paragraph 2). Absent negotiated consensus, mediation must follow. And if integration was not agreed to by mediation, "arbitration should be mandatory" (paragraph 8(a)). The arbitrator, then, was "to merge the respective seniority lists in a fair and equitable manner" (paragraph 8(i)), and he had authority to resolve the "issues remaining open between the parties" at that stage in the procedure, and to confirm agreements and stipulations made by the parties in negotiation and mediation (paragraph 8(f)). The arbitrator's award was "final and binding as to all flight deck operating crew members and shall be defended by the parties" to the agreement (paragraph 8(j)). Furthermore,

> All parties * * * shall in good faith seek its acceptance and its implementation by the Company in unchanged form. No change will be agreed to by any party with the Company unless all parties agree in writing to such change. Should agreement not be reached with the Company in its entirety, the parties will present and advocate the award in its entirety in any arbitration proceedings with the Company [pursuant to section 13(a) of the LPP's] to resolve seniority integration. Paragraph 13.

The arbitration. After unsuccessful intra-union negotiation and mediation on seniority integration, arbitration took place before Arbitrator Lewis M. Gill. 5/ The hearing, fully participated in by the four union representatives, lasted approximately 35 days and closed on January 14, 1981. At the hearing, Janus Group appeared twice to present its integration position. Following the hearing, Arbitrator Gill held 15 days of executive session with the union parties. Ultimately, the record contained over 4,700 transcript pages and hundreds of exhibits.

On March 12, 1981, Arbitrator Gill issued an award, "the culmination," he stated, "of an exceptionally lengthy series of proceedings * * *." 6/ Three aspects of the award were particularly difficult to resolve, and created great dissention among the parties. They remain under attack before us.

5/ Arbitrator Gill was named in the procedural agreement as the arbitrator ("The Arbitrator shall be Lewis Gill. In the event that he is unwilling or unable to serve for any reason, the Arbitrator shall be * * *, * * *, or * * *, to be chosen by lot" (paragraph 8(b)).). Clearly, he was the first choice of the parties to the arbitration, including Pan Am Engineers, and understandably so. Arbitrator Gill is experienced with airline seniority, having participated in integrating seniority and resolving seniority disputes in connection with, for example, the United-Capital, Bonanza-Pacific-West Coast (Air West), Alaska-Alaska Coastal, Allegheny-Mohawk, and Saturn-TIA consolidations. Neither Janus Group nor PAPE has raised a question as to his qualifications to decide the seniority dispute.

6/ From beginning to end, implementation of the unions' procedural agreement for seniority integration took a year, "a remarkably long time to carry out." Both statements by Arbitrator Gill, on the difficulty that the unions had in resolving the seniority question, were made in a 59-page opinion, dated May 11, 1981 (at 1-2), in which he "discusses the issues and sets forth the reasons for the decisions which are embodied in the Award" (id. at 1).

The award: on crew complement and cross-bidding. In 1948, the Board required (under authority now exercised by the Federal Aviation Administration) that air carriers use a third cockpit crew member, along with two pilots, on all aircraft certified for more than 80,000 pounds maximum take-off weight. Two patterns of implementation of this decision developed in the industry. One group of carriers, including Pan American and National, used flight engineers as the third crewman; namely, an individual holding a flight engineer's certificate issued by the FAA and whose assigned duty was to assist the pilots in the mechanical operation of the airplane. The second group of carriers assigned pilots, with engineer certification, to the third seat. When jet aircraft appeared in the 1950's, ALPA took the position that the third crewman must be a pilot. FEIA opposed this, and controversy resulted at most airlines, many being struck by the unions.

National decided to continue using flight engineers. Consequently, it continued to have two airmen groups, engineers and pilots. It maintained two independent seniority lists, and did not allow cross-bidding or displacement between the groups. Pan American decided to begin using pilots/engineers ("P.F.E.'s") as the third crewman. Its flight deck personnel, from then on, were combined on a single seniority list. P.F.E.'s were allowed to bid for pilot vacancies and bump back to engineer positions to avoid furlough. Since Pan American's former flight engineers did not qualify as pilots, the carrier agreed with Pan Am Engineers to treat them in a special way, for bidding purposes, as long as they worked for the carrier. Memorandum of Agreement dated May 13, 1963. These engineers (listed by name in Appendix A of the memorandum) had "the prior right as against flight crew members other than the [Appendix A] flight engineers * * * to bid for and occupy the third crew member position * * *." 7/

At the time of the instant seniority arbitration, Arbitrator Gill found that an "unusual difficulty arises from the fact that the 'cross bidding' arrangements between the pilots and the engineers at the two airlines are wholly different" (Opinion at 8). Deciding "not to disturb the [premerger] cross-bidding situations * * *" (id. at 54), Arbitrator Gill set-up two integrated lists. One, called the "Pilot List," contained National pilots and all Pan American airmen; the other, the "Engineer List," contained National engineers and all Pan American airmen (Award at 1). With such list arrangement, which in effect duplicated National's two lists for pilots and engineers, and Pan American's single airman list, Arbitrator Gill then had cross-bidding be,

> As before on each airline. Pan Am airmen continue cross-bidding practices vis-a-vis each other, but Pan Am Pilots cannot bump National Engineers. National Pilots cannot bid Engineers positions, National Engineers cannot bid Pilot positions. National Engineers to have the same rights as Pan Am Appendix A Engineers against being displaced from Engineers seats by Pilots. Award at IV.C.

7/ The May 13, 1963 company-union agreement was implemented further by separate agreement between the company and each Appendix A engineer. These private contracts provided that if Pan American took any action detrimental to the engineer's "prior right" to the third flight deck position, the claim against the company could be arbitrated (paragraph 4).

In so determining lists and bidding, Arbitrator Gill rejected strong objection by Pan Am Engineers that he had violated the May 13, 1963 crew complement agreement and exceeded his authority in the arbitration. The union argued, first, that Pan Am Appendix A engineers' prior right to the engineer seat ran against all other Pan American airmen and all National airmen, including National flight engineers. 8/ Second, Pan Am Engineers asserted that the crew complement agreement gave Pan American P.F.E.'s an unlimited right to bid for engineer seats if they were not held by Appendix A engineers. The union argued, therefore, that Arbitrator Gill could not except National engineers from displacement by P.F.E.'s. Arbitrator Gill found that, by these contentions, Pan Am Engineers was simply trying "to impose that agreement on the National airmen against their will" (Opinion at 54). Pan American airmen, in his judgment, "will continue to have the cross-bidding and bumping rights vis-a-vis each other (except for Appendix A engineers) which they have had before [under the May 13, 1963 agreement] * * *." But, he concluded, "that Agreement cannot be viewed as binding on the National airmen, who were not parties to it." Id. at 54-55 (emphasis added).

The awards on furloughees. "[O]ne of the most explosive of all the issues in the entire case," Arbitrator Gill found, concerned the furlough situation at Pan American (Opinion at 40). A few years before the merger, the carrier had converted most of its fleet from narrow-bodied 707's to wide-bodied 747's to secure "more seats with fewer planes" (id. at 7). Arbitrator Gill found that the effect on Pan American's flight deck personnel had been that "[a] great many crew members who were hired in 1966, 1967 and 1968 with the advent of the new 747's, were furloughed in the early 1970's as the phasing out of the 707's got underway, and nearly 400 of them were still on furlough at the time of the merger in January 1980" (ibid. (emphasis added)). There was "a head-on-clash" in the arbitration "over the relative equities as between large numbers of National airmen hired between 1968 and 1978 and actively employed at the time of the merger, and large numbers of these Pan Am furloughees with earlier dates of hire who still have recall rights but who brought no active jobs to the merger" (id. at 8). Had a proposal been made by the parties, or Janus Group, "which would estimate the likely dates of recall of the furloughees and the likely length of service of the active pilots at those dates," Arbitrator Gill would have "slot[ted] the furloughees in/to the integrated lists] on that basis" (id. at 41). No such proposal was made, "[p]erhaps because of the difficulties in fashioning projections of that nature * * *" (ibid.).

8/ The award begins the engineer list by "[s]traight date of hire for all National Flight Engineers hired before February 22, 1964 and all PAA Flight Engineers hired prior to February 22, 1964 * * *" (at L.B. 1.). Pan Am Engineers insisted that the list must begin with Appendix A engineers regardless of their date of hire relative to that of National engineers.

Arbitrator Gill thus decided that the "realistic and fair solution" to furloughee seniority would be "to calculate the length of service of the furloughees at the time of their recall, and to slot them into the list by comparing their length of service with that of the active airmen at that time * * *" (Opinion at 41, 40). See Award at L.A.6. and L.B.4. 9/ To Pan Am Engineers' and Janus Group's "strong protests over what they termed this concept of 'floating length of service' for the furloughees," and its alleged illegality because "it does not provide a definite and final merged list at this point, but leaves the placement of the furloughees to be determined at future dates" (Opinion 41), Arbitrator Gill responded:

> This may well be a novel approach, but the problem itself is novel -- there has not been any previous merger case called to my attention where such massive numbers of furloughees, with such long periods of being off the property, were pitted against airmen from the other airline who brought current jobs to the merger. Opinion at 40 (emphasis added).

He concluded that no persuasive argument had been made by the parties or Janus Group that the award's "time of recall" calculation of furloughee seniority "is unfair or otherwise improper" (id. at 41).

The award: on ratio method. Pan American's reliance on 747 aircraft, contrasted with National's use of smaller planes, also complicated construction of an integrated seniority list for pilots. Because of the timing of hiring pilots at the two airlines, Arbitrator Gill found that there was great disparity between the number of Pan American and National pilots who could reasonably expect to man the larger, and higher paying, 747 and 727 aircraft in the future. See Opinion at 15-22. National airmen hired after 1964, moreover, would be denied the prospects for advancement to larger aircraft that they could have expected, under ordinary circumstances, absent the merger. To cure the "substantial practical inequities" against the National pilots in this regard (id. at 22), Arbitrator Gill determined to construct the middle part of the pilot list by a ratio method. Above and below this section, pilots were integrated by date of hire ("DOH") and/or length of service -- i.e., DOH with furlough time deducted ("LOS"). Award at L.A. 10/

9/ Exception was made for about 34 furloughed Pan American pilots who had received notice of recall before January 18, 1980. Their seniority was calculated like that of pilots who were working on the merger date. Award at L.A.6.

10/ Pilots hired before February 22, 1964, were integrated by date of hire. Length of service criteria were used for pilots hired after that date.

Pan Am Pilots favored a DOH-LOS list exclusively, and Arbitrator Gill's use of a ratio method, even for part of the list, "brought some extraordinarily bitter complaints * * *" (Opinion at 24). Nonetheless, Arbitrator Gill concluded that he had been given "the very broad direction," under the union parties' March 19, 1980 procedural agreement setting forth the guidelines for the arbitration, that "it shall be the duty of the Arbitrator to merge the respective seniority lists in a fair and equitable manner" (Opinion at 10). See March 19, 1980, Agreement at paragraph 8(i). Moreover, while ALPA's guidelines for construction of merged lists were not binding in this case, FEIA being also involved, Arbitrator Gill found them "entitled to considerable weight, since a large majority of the airmen involved in the case are ALPA members and since the Flight Engineers do not have any similar set of guidelines to be compared with those in the ALPA Manual" (Opinion at 10). Arbitrator Gill held it "fair to summarize" the ALPA guidelines, "the relevant portions of which have been unchanged at least since December 1971" (ibid.), as requiring,

> [C]onsideration first to a DOH list, then (if 'acceptable accommodation' of the equities is not accomplished by such a list) to look at an LOS list, then (if 'satisfactory accommodation' of the equities is still not accomplished) to attempt to accommodate the remaining inequities through temporary restrictions or conditions, and finally (if a 'satisfactory accommodation' is still not accomplished) to the 'deviation' from the DOH and LOS manner of constructing the list in order to reach a 'fair and equitable solution.' This 'deviation' has often taken the form of a ratio arrangement for all or part of the merged list. Opinion at 12 (emphasis added).

See ALPA "Merger Policies" Manual at paragraph 5, steps I-IV. Indeed, as Arbitrator Gill emphasized, "departures from length of service * * * are no rarity in * * * merger cases;" and he noted his use of a ratio in the Bonanza-Pacific-West Coast (Air West) merger and his comment there that "[s]peaking for myself, I would have favored using straight length of service as the basis for merging the lists if there were no substantial practical inequities which could not be covered by special protective provision" (quoted in Opinion at 38 (emphasis in original)). As for the instant merger, Arbitrator Gill reiterated that,

> That is still my view. In this case, however, as in * * * [Air West], I have concluded that there are some 'substantial practical inequities' in unrestricted operation of straight length of service which * * * could not feasibly be cured in workable and readily administrable fashion by special protective provision [, the last alternative to ratio method in ALPA guidelines]. Opinion at 38.

Thus, with "departures from length of service * * * not uncommon," and "expressly sanctioned by ALPA policy where they are deemed necessary to provide a 'fair and equitable solution,'" Arbitrator Gill turned aside Pan Am Pilots' opposition to a ratio method, and used it to integrate part of the Pan American-National pilot list.

The aftermath. All of the parties to the arbitration accepted the Gill award as the final and binding seniority proposal to submit to Pan American for implementation, except Pan Am Engineers. Pan Am Pilots, National Pilots, and National Engineers did so despite their dissatisfaction with parts of the award, which clearly represented compromise solutions to four-way disputes on integration issues. ("There are parts of * * * [the award] that the * * * [Pan Am Pilots] is not pleased with" (August 7, 1981, Opposition at 10); "The National Pilots also have most serious 'reservations' concerning certain aspects of the Gill Award * * *" (May 12, 1981, Answer at 1).). 11/ Pan Am Engineers continued to argue about the award's treatment of crew complement, cross-bidding, and furloughee issues. The union independently, and contrary to paragraph 13 of the March 19, 1980 seniority procedural agreement, supra, asserted to the company that bargaining must resume on these issues and, if necessary, be resolved by a second arbitration, this time conducted pursuant to section 13 of the LPP's.

Pan Am Engineers' position has been expressed to us, not directly by a petition to set aside the award, but in the union's opposition to National Engineers' motion to confirm and enforce the award. According to the union, Arbitrator Gill acted beyond the scope of his authority by integrating the seniority lists in a manner which assertedly abrogated Pan American's own premerger employees' private contract rights. After Pan American agreed to implement the seniority lists, Pan Am Engineers filed an additional pleading asserting that the carrier had no authority to put the award into effect because a dispute still existed with the union group under section 3 of the LPP's.

Two groups, moreover, have asked us to set aside the award. Janus Group argues for this because, assertedly, "the interests of the members of the Janus Group were not adequately considered [in the Gill arbitration] and * * * the integration award eventually issued by Arbitrator Gill was not 'fair and equitable' within the meaning of the labor protective process." Janus Group's asserted remedy is a new arbitration in which it "is granted full party status * * *." Petition at 2 (emphasis added).

PAPF, the group of Pan Am pilots formed in response to the award, argues that it must be set aside because a ratio method was used to integrate some pilot seniority. PAPF insists, as did Pan Am Pilots throughout the arbitration (discussed above), that a "time served" method, either DOH or LOS, is the only fair and equitable basis for integration; a ratio method is, assertedly, "inconsistent with the LPP's" (Petition at 2 and 24). The group asks us to require "all the parties, including PAPF and Janus Group, to renegotiate the award or to order such other relief to ensure that the final integrated seniority is fair * * * [and] equitable * * *" (id. at 24-25).

11/ ALPA, International also filed with the Board in support of the award. ("[T]he law necessarily affords the employees' representatives a wide range of discretion * * * to engage in flexible and rational compromise * * *" (August 7, 1981, Answer at 5).).

Holding itself apart from all of the foregoing controversy, Pan American accepted the Gill award on June 26, 1981, and agreed to implement the award entirely unchanged. 12/

Conclusions. We shall dismiss National Engineers' (or the "flight engineers formerly in the employ of National's") motion to confirm and enforce Arbitrator Gill's award. As Pan American has given full force and effect to the award, the request for our intervention is now moot.

The carrier's action is wholly consistent with our long-held, and judicially approved, view that "absent a showing of bad faith, the adoption by a carrier of an integrated seniority list proposed by the collective bargaining representatives of the employees involved amounts to the carrier having made 'provisions * * * for the integration of seniority lists in a fair and equitable manner' within the meaning of section 3 of the Board's labor protective provisions." 13/ It follows, therefore, that we also dismiss Janus Group's and PAPF's petitions to set aside the award. Neither group, both formed to forward the views of some Pan American furloughees and pilots, respectively, who were otherwise represented in the intra-union arbitration by Pan Am Engineers and Pan Am Pilots, has shown that these union representatives breached their duty of fair representation. The record before us amply demonstrates that all union parties vigorously advocated positions on seniority integration advantageous to their members. Janus Group, in addition, appeared in the arbitration to express, directly to Arbitrator Gill, its position for furloughees. To the extent that some of the parties failed to prevail in the substance of their views, and hence occasioned disappointment for certain furloughees and pilots, that is not grounds for our review of the intrinsic nature of the integration system established by the award. It is well-settled that the Board properly "decline[s] to review and to enter judgment on the merits of * * * [union representatives'] negotiated resolution of * * * [an internal union] seniority dispute arising out of a merger" if satisfied "that the resolution was reached in a fair and equitable manner." 14/ Here, the record shows that the labor parties adopted fair and equitable procedures -- four-way negotiation, mediation, and final and binding arbitration -- to resolve their differences on merged seniority; and that the procedures were faithfully carried out -- even to the unanimous selection of an eminent arbitrator in airline seniority matters.

12/ In accepting and implementing the award, Pan American stated that it had "determined to waive its right to an arbitration under Section 13(a) of the [LPP's] * * *." In other words, the carrier simply decided to forego bargaining with the employees' representatives about changes in the award which entailed the possibility that arbitration would be required with the representatives to settle bargaining disputes (July 2, 1981, Statement at 1). Pan American further stated that "[c]onsequently, the fair and equitable integration of flight deck operating crew members seniority has now been accomplished pursuant to Section 13(b) of the [LPP's] * * *" (id. at 2). Consistent with our comments supra, at n.4, the company is mistaken in the latter view. Since Pan American accepted, completely, the employees' seniority proposal, there was no dispute which required resolution under the procedure of sections 13(a) or 13(b).

13/ Delta-Northeast Merger Case, Order 73-1-24 at 5, aff'd Northeast Master Executive Council v. CAB, 506 F.2d 97 (D.C. Cir. 1974), cert. denied, 419 U.S. 1110.

14/ Kingston and Foster, supra Order 79-11-53 at 15.

What remains is Janus Group's charge that it was entitled to "full party status" in the seniority arbitration. We have, twice before in this merger case, rejected the identical claim (Orders 77-12-163/164/165 and 81-4-141). It is perfectly clear now that Janus Group, on its own and through union representation, fully participated in integrating seniority within the meaning of the LPP's. They were accorded an opportunity to present a statment of position and a closing argument in the arbitration. Their interests were also represented by the Pan Am Pilots and Pan Am Engineers at all stages of the arbitration.

What remains of PAPF's petition is the claim that "length of service" must be used, exclusively, to integrate pilot seniority under LPP section 3. The Board has long recognized that seniority lists may properly be predicted on factors other than length of service (Delta-Northeast Merger Case, supra Orde. 73-1-24 at 4):

> [T]he integration of seniority lists based on factors other than, or in addition to, date of hire or length of service is by no means uncommon: See, e.g., Delta-C&S Seniority List, 29 C.A.B. 1347 (1959), aff'd sub nom. Outland v. CAB, 284 F.2d 224 (D.C. Cir. 1960). Nor can we conclude that the use of factors in addition to date of hire or length of service is so unfair as to require that we adopt a general rule forbidding carriers from accepting seniority lists formulated on the basis of such additional factors. See, e.g., North Atlantic Route Transfer Case [12 C.A.B. 124 (1950)].

As the U.S. Court of Appeals for the District of Columbia Circuit said in affirming that judgment, the integration "problem has no facile solution * * *," and the Board's action "in refusing to look behind the freely negotiated list [, which used factors other than length of service,] * * * [is] wholly consistent with * * * [the Board's] obligation under the Act" (Northeast-MEC v. CAB, supra 506 F.2d at 104-105). We are satisfied, in the circumstances of this merger, that there were no facile answers available to Arbitrator Gill to resolve the myriad of complex and conflicting problems associated with pilot seniority integration. It was well within Arbitrator Gill's prerogative to address those problems through use of a ratio methodology in compiling a portion of the seniority lists. 15/

15/ In challenging the award, PAPF assails the arbitrator's projections of the size of the merged carrier's fleet as of January 1, 1986. PAPF contends that these projections, which allegedly are inaccurate in light of certain events transpiring after the close of the record in the arbitration proceeding, warrant the overturn of the integrated list. Such assertion provides no basis for our intervention. As the Board has stated in similar circumstances (Bonanza-Pacific-West Coast Merger Case, Order 72-11-79 at 2):

> [W]e have previously made plain our intention that an arbitrator's decision rendered pursuant to §13 be final and binding subject to only very limited exceptions * * *. We do not consider the existence of a mutual mistake in forecasting future facts to be one of these exceptions. Arbitration awards under §13 may often hinge on forecast facts. While those forecasts may later prove erroneous, we think it of overriding importance that arbitration proceedings, like any other litigation, be capable of prompt and final resolution.

That reasoning applies equally in this proceeding.

It is noteworthy, moreover, that Pan Am Pilots -- the authorized bargaining representative of the pilots seniority list at Pan American -- supports the Gill award and opposes the petitions filed by a few of its constituents through the Janus Group and PAPF. As Pan Am Pilots recognize, it is virtually impossible to satisfy everyone -- or sometimes anyone -- in a seniority integration case. Arbitrator Gill was faced with totally opposed positions for the integration of the seniority lists, and the parties were fully permitted to develop their cases supporting their separate positions in a record involving over 4,700 transcript pages and hundreds of exhibits. In the end the arbitrator did what most arbitrators do -- he picked parts of the different positions and made compromises to arrive at what he believed was an equitable result. There is no way, given the sharply divergent and contested positions of the parties, that the arbitrator could ever reach a result that was fully acceptable to all parties -- to say nothing of the individual pilots and flight engineers whose interests were represented in the proceeding. That is an inevitable result of arbitration. The fact that dissatisfaction remains is no basis for requiring another seniority integration.

Finally, there is no merit to the contentions raised by Pan Am Engineers. We reject the argument that there has been no "agreement" between the carrier and labor representatives within the meaning of section 3 of the LPP's in view of Pan Am Engineers' present opposition to the Gill Award. As discussed, the labor representatives for all flight deck personnel -- including Pan Am Engineers -- entered into an agreement establishing a series of procedures to accomplish the integration of the seniority of the cockpit crew members of Pan American and National. That agreement made the award of the arbitrator final and binding upon its signatories and required them to seek implementation of the award with the company. The arbitration was held and the decision was submitted to Pan American and accepted. The carrier's acceptance of the labor representatives' list satisfies the obligations imposed by section 3. Having bound itself to follow the course for integrating seniority lists set forth in the inter-union agreement, Pan Am Engineers cannot force a new arbitration simply because it is dissatisfied with the results of the prior one.

We also reject the argument that Arbitrator Gill exceeded the authority given him in the union parties' March 19, 1980 procedural agreement. The arbitrator's mandate was broadly written "to merge the respective seniority lists in a fair and equitable manner" (Agreement at paragraph 8(i)). The assertion that Arbitrator Gill exceeded his authority, moreover, is predicated on the notion that flight engineers for premerged Pan American acquired vested seniority rights through contracts with Pan American, and that the arbitrator was without authority to interfere with those rights. To the contrary, it has long been recognized that private contract rights must, if necessary, yield to a fair and equitable integration of seniority lists pursuant to Board imposed LPP's. See Kent v. CAB, 204 F.2d 263, 266 (2d Cir. 1953), cert. denied, 346 U.S. 826; American Airlines v. CAB, 445 F.2d 891 (2d Cir. 1971), cert. denied, 404 U.S. 1015 (1972); Sanders v. ALPA, 361 F. Supp. 670, 672 (S.D.N.Y. 1973). National pilots and engineers, moreover, were not parties to, or bound by, the agreements between premerged Pan American and its premerger airmen.

Pan Am Engineers also urges that Arbitrator Gill exceeded his authority when he determined that those Pan Am airmen on furlough on the effective date of the merger will be slotted into the integrated seniority lists at such time as they are recalled to active service, with their seniority positions to be determined by their relative length of service at the time of their recall. The vice said to render this provision unlawful "is that furloughed Pan American airmen remain unintegrated * * *" (May 12, 1981, Answer at 27). We disagree. The arbitrator has made full provision for the integration of Pan Am furloughees on the seniority lists. It is merely that the method of integration calls for a future event to trigger the calculation of their positions on the integrated lists.

In sum, we conclude that Pan American has integrated flight deck personnel seniority in compliance with the labor protective provisions. Our responsibility is confined to examining whether the integration was fairly and equitable conducted. The answer is affirmative.

ACCORDINGLY, we dismiss the motion of flight engineers formerly in the employ of National for confirmation and enforcement of arbitration award, and the petitions of Janus Group and Pan American Pilots Fighting to set aside arbitration award filed in the Pan American-Acquisition Of Control Of, And Merger With National case, Docket 33283.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

(SEAL)
All Members concurred.