Exhibit H

Order 82-8-65

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 16th day of August, 1982

National Airlines Acquisition, Arbitration Award	Docket 40407

ORDER

This proceeding arises out of the Pan American-National merger approved by the Board subject to the imposition of labor protective provisions (Orders 79-12-163/164/165). Before the Board is a request by Petitioners Billy J. Williams, Pedro L. Contreras, Harrell D. Scott, and Kenneth E. King, former National employees who currently work for merged Pan American, which invokes our retained jurisdiction over sections 3 and 13(a) of the LPP's, and asks us to vacate an arbitration award issued under these sections. 1/ Pan American and the Transport Workers Union of America, AFL-CIO, have filed answers opposing their petition. For the reasons given below, we have determined to dismiss the petition. 2/

1/ The sections read as follows:

> 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.
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> 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/ In addition, the petitioners filed an unauthorized reply to the answers of Pan American and TWU. We have considered it in this case except to the extent that it raised issues not contained in the original petition.

Before National's merger with Pan American, the National employees classified as mechanics were represented by International Association of Machinists (IAM). Other employees working in a number of ground service classifications were represented by the Air Line Employees Association (ALEA). As Pan American employees, they became represented by Transport Workers Union of America, AFL-CIO (TWU). Pan American and TWU, implementing section 3 of the LPP's, bargained about and agreed on April 18, 1980, to an integrated seniority list for those mechanics and ground service employees, all of whom are included in TWU's mechanic bargaining unit. In all, the unit contained 6,664 employees. The agreed-upon merged seniority list, constructed on a date of hire basis, became effective on May 26, 1980, with a final revision on November 1, 1980.

From the beginning of the Pan American-TWU negotiations, some National mechanics opposed the date of hire method for seniority integration and wanted a ratio-rank method used instead. The ratio-rank method would be based on the ratio of the number of former Pan American employees to the number of former National employees at the time of the merger. The representative of these National mechanics calculated the ratio as 3.1 to 1. Under this method the integrated seniority list would be constructed by taking the three most senior Pan American employees, then the most senior National employee, then the next three most senior Pan American employees, and so on.

Pan American and TWU agreed to use the date of hire method for integrating seniority. The IAM and ALEA stated that this was a fair and equitable way of integrating seniority. The National employees who wanted the rank-ratio method then formed a group called the Maintenance Legal Aid Committee (MLAC) and retained legal counsel to represent their position. Of MLAC's 537 members, all but one was a former National mechanic and most were based in Miami, Florida. 3/ On the integrated list of 6,664 merged Pan American mechanics and ground service personnel based throughout the system, 1,523 were from National. MLAC, therefore, spoke for about one-third of the former National employees (the one-third being virtually all mechanics).

After the April 18, 1980 seniority agreement was reached, MLAC pressed Pan American for arbitration of whether the ratio-rank method rather than the date of hire method was the better means of seniority integration under the LPP's. Pan American and TWU consented to arbitrate the question, and Mr. David H. Stowe, a former chairman of the National Mediation Board, was mutually selected as the arbitrator. Before hearings began, all mechanics and ground service employees on the date of hire list were notified of the proceeding and given the opportunity, individually or in groups like MLAC, to participate. No person or group asked to do this, and the only parties to the arbitration were Pan American, TWU, and MLAC. Six days of hearings were held; a 998-page transcript, with 120 exhibits, was compiled; post hearing briefs and reply briefs were submitted. On December 17, 1981, Arbitrator Stowe issued his award in a 36-page opinion. He upheld the date of hire method originally chosen by Pan American and TWU for seniority integration.

3/ Petitioner Billy J. Williams is an acknowledged member of MLAC. We do not know whether the other three petitioners are members.

Arbitrator Stowe found that MLAC's sole challenge to the integrated list was to the use of the date of hire method for merging National's and Pan American's mechanic-ground service personnel lists. He noted that before the two lists were merged by this method, Pan American and TWU bargained about and agreed to adjustments in National's list which compensated for differences between the premerger seniority systems at the carriers. He found that MLAC raised no objection to the adjustments. On the date of hire issue, MLAC contended that it was inherently unfair to former National employees and only a ratio-rank method was appropriate. After comparison of the two methods, however, Arbitrator Stowe concluded that "the ratio-rank method, when applied in the manner proposed by MLAC, affords an unacceptable importance to the maintenance of relative rank without any compensating recognition to length of continuous service." 4/ It would provide a substantial windfall to most of the former National employees simply by virtue of the fact that they were employed by National rather than by Pan Am, while completely ignoring the greater length of service of former Pan American employees. 5/ On the other hand he pointed out that "[f]rom the early days of the labor movement the basic principle of seniority has been that the employee with the greatest length of service should hold competitive rights over employees with less length of service." Award at 35, 36. He recognized, however, that there was no perfect solution for integrating the seniority lists, Award at 35:

> There is no ideal way to merge seniority lists since no single way could be devised that would meet all situations. Whatever the method used, when two disparate lists are integrated, some employees will be disadvanteged and some will gain. In the Labor Protective Provisions the CAB has recognized this fact by establishing the broad guiding principle that the lists should be merged 'in a fair and equitable manner.' Where, as in this case, two differing methods of seniority integration are at issue, the decision must rest on which one is fair and equitable to all the employees concerned.

On the basis of the hearing, he concluded "that the date of hire method for integrating the seniority lists for Mechanics and Ground Service employees more nearly satisfies the 'fair and equitable manner' criterion set forth in the Labor Protective Provisions." Award at 36.

4/ As the arbitrator additionally noted, "[I]n most of the cited cases where the ratio-rank method has been used, it is generally used in combination or conjunction with length of service. In this instance no weight is given [by MLAC] to continuous service." Award at 28.

5/ The arbitrator pointed out that, under MLAC's proposal, "[S]ome former National employees are advanced for seniority purposes as much as 9 years over their date of hire with the majority advancing between 4 to 6 years" (Award at 27).

Petitioners, four employees affected by Arbitrator Stowe's award, now contend that it does not comply with the LPP's and must be vacated. Petitioners further ask that we either construct an integrated list or order another arbitration with a new arbitrator. Petitioners have made a number of charges to show that Arbitrator Stowe exceeded his authority and that his award is wholly baseless and without reason. Pan American and TWU have essentially responded that petitioners' contentions, even if valid, "address rather insignificant findings by the arbitrator, well within his jurisdiction, that do not begin to form the basis of his decision." Furthermore, they assert that the contentions themselves are baseless and without reason, or simply restate petitioners' opinion that a ratio-rank list is the only fair and equitable merged list in this case. In sum, Pan American and TWU argue that petitioners have failed to show that Arbitrator Stowe abused his authority. 5/

Seniority integration is usually the most difficult and complex labor problem resulting from a merger. No method will satisfy every employee. As Arbitrator Stowe aptly stated, "[t]here is no ideal way to merge seniority * * *. Whatever the method used, * * * some employees will be disadvantaged and some will gain." This merger has produced seniority winners and losers. Yet, it is plain to us that an experienced and impartial arbitrator, following the requirements of the labor protective provisions, rejected one method of integration as unfair and inequitable, and concluded that another was as nearly fair and equitable as circumstances permitted.

Even if we believed that the petitioners' complaints about the arbitrator's award were substantially valid, we would not vacate his decision if these charges were made by MLAC, the petitioners' representative in the arbitration proceeding. We have held that the labor protective provisions "are intended as a system of self-government" between merging carriers and affected employees (or their representatives) and that the arbitration requirement in the provisions is intended to be "the means of solving the unforeseeable [dispute] * * *" without Board intervention. Pan American-TWA Route Exchange Agreement (Petition of Pan American), Order 80-6-95 at 33, citing United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581 (1960). We have further held that when the parties to LPP arbitration challenge the grounds upon which an award rests, we will not "review the merits of a challenged award, the merits including questions of law and questions of fact." We will intrude upon the arbitral means of settling LPP disputes only to the extent of examining whether an award "draws its essence" from the LPP's; in other words, whether it rests on grounds consistent with the letter and purpose of the provisions. Id. at 4, citing United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960).

5/ Pan American and TWU note that Mr. Williams's position here is "somewhat incongruous," since he now challenges the award which he asked the Board to enforce even before Arbitrator Stowe had issued it. We denied that request, Order 81-12-12 (December 1, 1981).

This narrow standard of review, as indicated, applies to challenges made by parties to the arbitration -- carriers, employees and employee representatives. In this case, the parties were merged Pan American and the employee representative TWU and MLAC. No individual employees were parties. 7/ All employees affected by the seniority dispute were represented by either TWU or MLAC. Petitioner Williams joined MLAC; Petitioners Contreras, Scott, and King may have been MLAC members, certainly were TWU members and did not become individual parties to the arbitration. Consequently, we conclude that petitioners cannot now seek directly to vacate Arbitrator Stowe's award by attacking the grounds upon which it rests. This could have been done on their behalf by their representatives, whether MLAC or TWU. The representatives, however, have accepted the award as the final and binding resolution of seniority integration for their members.

We also conclude that dismissal of the petition is clearly dictated because petitioners make no showing of bad faith by the employee representatives to the arbitration, or claim that the proceedings were otherwise improperly conducted. 8/ Under federal labor law and arbitration standards, an employee is bound by the resolution of seniority and other matters by his statutory collective-bargaining representative in negotiations or binding arbitration unless he can show that the resolution reached was tainted by the union's breach of its duty of fair representation. Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953); Humphrey v. Moore, 375 U.S. 335, 342 (1964); Hines v. Anchor Motor Freight, 424 U.S. 554, 568 (1976). The courts have indicated that the Board may consider such standards in ruling on the LPP's. See Delta Air Lines, Inc. v. CAB, 574 F.2d 546, 550 (D.C. Cir., 1978), cert. denied, 439 U.S. 819. We think it entirely appropriate that employees who have recognized representatives for LPP purposes, or who, on their own, form and support groups to perform the same function, should be bound by the actions of their agents unless bad faith is involved. 9/ The essential basis of the petition before us is that one such agent was unsuccessful in arguing for a ratio-rank integration method. In our view, this cannot be the basis for permitting individual supporters of the method to try their hand at arguing the case before the Board or another arbitrator.

7/ Cf. Pan American-TWA Route Exchange case, supra Order 80-6-95 at 2, where three flight engineers participated as parties in the arbitration with Pan American, and their union also was a party.

8/ The petitioners' charge that TWU behaved improperly, assertedly by deliberately not correcting a figure used by the arbitrator. This charge lacks any merit.

9/ See Allegheny-Mohawk Merger Case (Petition of Kingston and Foster), Order 79-11-53 at 17, aff'd sub nom. Kingston, et al. v. CAB (D.C. Cir., No. 80-1028, decided without opinion March 6, 1981), Pan American-Acquisition Of Control Of, And Merger With National (Petitions of Former Flight Engineers, Janus Group, PAPF), Order 82-4-75 at 3.

ACCORDINGLY, we dismiss the petition of Billy J. Williams, Pedro L. Contreras, Harrell D. Scott, and Kenneth E. King to vacate the arbitration award filed in the Pan American-Acquisition Of Control Of And Merger With National case (Docket 33282), Docket 40407.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

(SEAL)

All Members concurred.