



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the
**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**
alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended
involving employees of
**ATLAS AIR, INC./POLAR AIR
CARGO WORLDWIDE, INC.**

35 NMB No. 69

CASE NO. R-7174
(NMB File No. CR-6937)

FINDINGS UPON
INVESTIGATION

September 29, 2008

This determination addresses the application filed by the International Brotherhood of Teamsters, Airline Division (IBT). The IBT seeks to represent the craft or class of Flight Deck Crewmembers on Atlas Air, Inc. (Atlas) and Polar Air Cargo Worldwide, Inc. (Polar) and requests the National Mediation Board (NMB or Board) to investigate whether Atlas and Polar (“the Carriers” collectively) are operating as a single transportation system. The Flight Deck Crewmembers on both Atlas and Polar are currently represented by the Air Line Pilots Association (ALPA).

For the reasons set forth below, the Board concludes that Atlas and Polar operate as a single transportation system for the purposes of the craft or class of Flight Deck Crewmembers.

PROCEDURAL HISTORY

On June 12, 2008, the IBT filed an application alleging a representation dispute involving the Flight Deck Crewmember employees of Atlas and Polar. This application was assigned NMB File No. CR-6937 and Susanna F. Parker

was assigned to investigate. On June 16, 2008, the Board requested the Carriers provide information on whether Atlas and Polar were operating as a single transportation system. The Carriers filed a submission on June 20, 2008 and filed a response to the Board's questions on June 30, 2008. Both the IBT and ALPA submitted a position statement on July 16, 2008. The Carriers responded on July 23, 2008.

ISSUE

Are Atlas and Polar a single transportation system?

CONTENTIONS

IBT

The IBT asserts that Atlas and Polar constitute a single transportation system for representation purposes for the craft or class of Flight Deck Crewmembers and that Atlas Air Worldwide Holdings, Inc. (AAWW), the holding company for Atlas and Polar, has consistently expressed its intention to merge the operations of Atlas and Polar. The IBT argues that the two Carriers: share many of the same individuals on their Boards of Directors; have overlapping management and labor relations; and have integrated seniority lists. The IBT also contends that: equipment is interchanged between the Carriers via lease agreements as needed to serve customers; Crewmembers are qualified to fly on both operating certificates; and the Atlas and Polar handbooks are being combined. Finally, the IBT asserts that Atlas and Polar are currently negotiating with ALPA to form a single collective bargaining agreement (CBA).

ALPA

ALPA contends that it "has spent considerable time and effort attempting to integrate the pilot work groups and otherwise facilitating the creation of a single carrier." ALPA states that it has established a Policy Initiation Date (PID) for implementation of its Merger Policy with respect to Atlas and Polar and "will continue to seek to facilitate establishment of a single crew force and collective bargaining agreement covering the Atlas and Polar Crewmembers, consistent with the resolution of the ALPA Executive Council." ALPA reminds the Board that the Atlas and Polar Master Executive Chairmen (MEC) remain in dispute as to whether Atlas and Polar are a single transportation system. ALPA states that:

[T]he Atlas MEC has taken the position that the prerequisites for a merger of the two crew forces have

been fully met under Section 1 of the Atlas collective bargaining agreement. However, the Polar MEC has continued to pursue several grievances which, *inter alia*, allege that the systems remain separate under the merger provisions of Section 1 of the Polar collective bargaining agreement.

ALPA contends that efforts to integrate the Atlas and Polar groups have been complicated because: the two Carriers are still held out to the public as separate; the aircraft will not have conformed markings; each Carrier will continue to have separate operating certificates; and DHL Corporation has a major interest and investment in Polar but not Atlas.

Atlas/Polar

The Carriers state that Atlas and Polar comprise a single transportation system for the craft or class of Flight Deck Crewmembers. The Carriers also state that although the Atlas and Polar crews remain separate at this point, both the Atlas and Polar CBAs require such a separation until the required single CBA can be negotiated and implemented. According to the Carriers, the process of completing a merged CBA should be completed no later than July 1, 2009. The Carriers also assert that as soon as a single CBA is implemented the already integrated seniority lists will be implemented and the Polar Crewmembers will become employees of Atlas.

The Carriers contend that ALPA's submission that "the Polar MEC has continued to pursue several grievances which, *inter alia*, allege that the systems remain separate under the merger provisions of Section 1 of the Polar CBA" is incorrect. The Carriers contend that the Polar MEC unsuccessfully arbitrated a grievance in 2006 alleging that Polar was violating the Polar-ALPA CBA by failing to keep the aircraft and operations of Polar and Atlas separated pending completion of the merger. The Carriers assert that these provisions of the CBA are triggered only when a merger is pending. Therefore, the Carriers argue that by filing this grievance, the Polar MEC conceded that a merger is pending.

The Carriers contend that: there is substantial overlap among the members of the Carriers' Boards of Directors and many senior management individuals hold positions with both Carriers; labor relations and Crewmember personnel functions at both Carriers are already centralized and under common control and direction; the resources of both Carriers are coordinated centrally; Crewmembers are cross-utilized; and uniforms will be standardized by the time the single CBA is in place.

FINDINGS OF LAW

Determination of the issues in this case is governed by the Railway Labor Act (RLA or Act), as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

Atlas and Polar are common carriers as defined in 45 U.S.C. § 181.

II.

The IBT and ALPA are labor organizations as provided by 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions, “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required. In determining the choice of the majority of employees, the Board is “authorized to take a secret ballot of the employees involved or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives . . . by the employees without interference, influence, or coercion exercised by the carrier.”

STATEMENT OF FACTS

A. Background and Representation

Atlas began operations in 1993 providing Aircraft, Crew, Maintenance, and Insurance freighter leasing to airlines around the world. On April 28, 1999, ALPA was certified as the representative of the craft or class of Flight Deck Crewmembers on Atlas. *Atlas Air, Inc.*, 26 NMB 222 (1999). Atlas currently employs 621 Flight Deck Crewmembers. Polar was also formed in

1993 to provide scheduled airfreight and charter services between the Americas, Asia, Europe, and the Far East. ALPA was certified as the representative of Flight Deck Crewmembers on Polar on October 8, 1996. *Polar Air Cargo*, 24 NMB 3 (1996). Polar currently employs 267 Flight Deck Crewmembers. In February 2001, AAWW formed its current holding company with Atlas as a wholly-owned subsidiary. AAWW is incorporated in Delaware and headquartered in Purchase, New York.

On July 25, 2001, Atlas and Polar advised the U.S. Department of Transportation (DOT) that they had entered into an agreement whereby AAWW would acquire all of the outstanding stock of Polar. AAWW acquired Polar in November 2001. By Final Order 2002-5-24 issued on May 28, 2002, the DOT granted the de facto transfer of the certificate and exemption authority, together with related frequency allocations, to Polar, under the ownership of AAWW. The DOT did not approve the de facto transfer with respect to Polar's U.S. - Brazil certificate authority and related designation and attendant frequencies; and instituted a separate proceeding to reallocate Polar's Brazil authority to another U.S.-certified carrier. The DOT also transferred four Atlas aircraft to Polar.

AAWW's Board of Directors instructed management to merge the Atlas and Polar crew forces on November 5, 2004. Representatives of AAWW met with both ALPA MECs to begin the merger process the following month. AAWW notified the NMB of its decision to merge the operations and certificates of Atlas and Polar in June 2005. Before the merger process was complete, Polar pilots conducted a strike which was settled by a Return to Work Agreement in October 2005. As part of the Return to Work Agreement, the Polar MEC agreed to complete the merger. In October 2005, AAWW advised the NMB of its renewed intention to merge Atlas and Polar. On October 26, 2005, ALPA set a Merger PID and began integrating the Polar and Atlas seniority lists pursuant to ALPA Merger Policy.

Although AAWW originally planned to merge operating certificates, in late 2005 AAWW decided that post-merger operations would continue with a merged crew flying on both operating certificates. Both MECs and ALPA were advised in January 2006 that this would likely be the case. In May 2006, AAWW advised the DOT that it would maintain separate Federal Aviation Administration (FAA) operating certificates for Atlas and Polar but reaffirmed its intention to merge the operating entities.

The Merger Representatives for both Polar and Atlas could not agree on an integrated seniority list and submitted their dispute to arbitration. On November 26, 2006, an arbitrator issued an award combining the Polar and

Atlas Flight Deck Crewmembers into single seniority lists – one for Pilots and one for Flight Engineers. After the arbitration award, the parties remained in dispute over the initiation of negotiations for a single CBA.

In June 2007, DHL Express acquired a 49 percent equity interest, including a 25 percent voting interest, in Polar. This transaction left AAWW with a 51 percent ownership interest and 75 percent voting interest in Polar.

In July 2007, AAWW filed management grievances under both the Atlas and Polar contracts to compel ALPA to complete the single CBA negotiations. On behalf of the Atlas MEC only, ALPA agreed that it was contractually obligated to bargain. However on behalf of the Polar MEC, ALPA rejected AAWW's grievance and refused to begin the negotiations. In March 2008, hearings on the grievance began. On May 9, 2008, the ALPA Executive Council adopted a resolution directing ALPA President John Prater to present the combined seniority list to management and to begin negotiations for a single CBA. ALPA presented the integrated seniority lists to AAWW on May 23, 2008. Pursuant to both the Atlas and Polar CBAs, ALPA's having presented the combined seniority lists to AAWW begins a nine-month clock for direct negotiations, after which all open issues are to be resolved by final and binding interest arbitration. As a result, AAWW withdrew its grievances on June 10, 2008.

B. Management and Labor Relations

The makeup of the Atlas Board of Directors is the same as that of the AAWW Board of Directors, and Gene Davis is the Chairman of both. Davis is also the Chairman of the Polar Board of Directors. William Flynn, CEO of AAWW, Atlas, and Polar; Adam Kokas Senior Vice President, General Counsel and Chief Human Resources Officer, and Secretary for AAWW, Atlas, and Polar; and John Dietrich, Executive Vice President and Chief Operating Officer for AAWW and Atlas, and Executive Vice President and Chief Transportation Officer for Polar are also members of the Polar Board of Directors. The other members of the Polar Board of Directors are Randy Clark, Chief Operating Officer of Polar, and one individual designated by DHL Express. Additionally, the following senior management individuals hold positions with both Atlas and Polar: Jason Grant, Senior Vice President and Chief Financial Officer; Michael Steen, Senior Vice President and Chief Marketing Officer; William Bradley, Vice President and Treasurer; James Cato, Vice President, Flight Operations and Labor Relations; Ken Johnson, Vice President, Charter Sales and Marketing; William Kelley, Vice President, Safety and Regulatory Compliance; and Mark Swearingin, Vice President, Technical Operations.

Labor relations and personnel functions for both Atlas and Polar are centralized and administered by James Cato. Similarly, the human resources operations are consolidated into one department overseen by Adam Kokas. Atlas and Polar employees are subject to the same personnel policies and employee handbook.

C. Labor Protection Agreements and Cross-Utilization of Employees

The CBA between ALPA and Polar contains the following reference to labor protections:

In the event of a complete operational merger between the Company and another air carrier, . . . the following seniority-integration procedures will apply:

[e.] The aircraft (including orders and options to purchase aircraft) and the operations of each pre-transaction airline shall remain separated until such time as both the crewmember seniority lists are integrated and the crewmember collective bargaining agreements are combined in accordance with paragraphs 1.b through 1.d herein. It shall not be deemed a violation of Sections 1.B or 1.C for a successor (including the Company, if applicable) to maintain and operate the two pre-merger entities as separate airlines pending the integration of seniority lists and negotiation of a consolidated collective bargaining agreement in accordance with this Paragraph D.

ALPA presented AAWW with a combined seniority list and appointed a committee to negotiate a single CBA.

According to James Cato,

But for the current separation of the Atlas and Polar Crew forces, and except as limited by Federal Acquisition Regulation requirements (Part 119 Post Holders), most employees of the carriers are cross-utilized. These include, but are not limited to, Crew Scheduling, Crew Planning, Crew Travel, Crew Training, System Control, Document Services, Human

Resources, Legal, Finance, Ground Operations, Maintenance and Marketing.

D. Recruiting and Training

Crewmembers applying for jobs for either Atlas or Polar are directed to send their resumes via crewjobs@atlasair.com. In a job posting for a Flight Operations, Crew Scheduler position, applicants are advised that they would be responsible for “managing the day-to-day flight activities of Atlas and Polar Crewmembers as well as compliance with Department standards.”

In a letter to the FAA, AAWW states that training will be consolidated under a Multiple Operator Concurrent Training (MOCT) Program. Under the MOCT Program, “The training program(s) approved for both certificates will be essentially identical. They will be set forth as approved training programs in the Flight Operations Training Manuals (FOTM) of both Atlas and Polar.” Cato stated that “All aircraft operating manuals, procedures and checklists for each carrier will be identical (‘mirrored’).”

E. Public Relations and Marketing

Atlas and Polar will continue to operate under their own separate brands. AAWW publications identify both Atlas and Polar as subsidiaries and describe the services provided by AAWW. On the AAWW website, www.atlasair.com, there are links to both Atlas and Polar. The fact sheet on the AAWW website states,

AAWW is the parent company of Atlas Air, Inc. (Atlas) and majority owner and controlling shareholder of Polar Air Cargo Worldwide, Inc. (Polar), which together have a fleet of 37 Boeing 747 freighter aircraft.

Through Atlas and Polar Air, AAWW is engaged in providing five specific services and is:

- The world’s leading provider of ACMI (Aircraft, Crew, Maintenance, and Insurance) leasing to major airlines around the globe.
- One of the largest providers of airport-to-airport freight carriage, operating a globally integrated Scheduled Service network serving major world trade lanes.

- A major provider of Charter Services to the U.S. Military, through the Air Mobility Command and the Civil Reserve Air Fleet Program.
- A leading supplier of Charter Services to commercial clients.
- Dry Leasing is also provided by leasing aircraft, without any other support services.

The website also states “[b]oth Atlas and Polar operate air-freight charter flights that support AAWW’s very complimentary military and charter operations.”

F. Routes and Schedules

Atlas and Polar will not combine their routes and schedules; however Atlas aircraft and crew provide additional or substitute flying for Polar, subject to the restrictions set forth in the Polar CBA, as necessary. Polar operates seven aircraft and two are wet leased from Atlas.

G. Logos, Uniforms, and ID Badges

The equipment will not have conformed markings and there will not be any changes in corporate insignia or logos. Although currently there are minor differences in the uniforms worn by Atlas and Polar Crewmembers, the uniforms will be standardized by the time the single CBA is in place. On May 31, 2006, AAWW wrote on its internal message board, “While there will be some ground staff that may remain Polar employees, all Crewmembers and most ground staff will eventually transition to Atlas employee status and, yes, they will be issued Atlas IDs.”

DISCUSSION

I.

The Board’s Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among a carrier’s employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *General Comm. Of Adjustment v. Missouri-Kan.-Tex. R.R.*, 320 U.S. 323 (1943); *Switchmen’s Union v. Nat’l Mediation Bd.*, 320 U.S. 297 (1943). In *Airline Pilots Ass’n Int’l v. Texas*

Int'l Airlines, 656 F.2d 16, 22 (2nd Cir. 1981), the court stated, “the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings.”

II.

Single Transportation System

Section 19.4 of the Board’s Representation Manual (Manual) provides that: “Any organization or individual may file an application, supported by evidence of representation or a showing of interest . . . seeking a NMB determination that a single transportation system exists.” Manual Section 19.501 provides the factors for making a determination whether a single system of transportation exists.

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier’s stock; if signs, logos, and other publicly visible indicia have been changed to indicate only one carrier’s existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has been progressed.

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here, the Board investigates whether labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

14 NMB 218, 236 (1987).

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *Air Methods/CJ Sys.*, 35 NMB 59 (2008); *US Airways/America West Airlines*, 33 NMB 49 (2006); *Burlington Northern Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Allegheny Airlines, Inc. and Piedmont Airlines, Inc.*, 32 NMB 21 (2004). Further, the Board has noted that a substantial degree of overlapping ownership, senior management and Boards of Directors is critical to finding a single transportation system. *Precision Valley Aviation, Inc., d/b/a Precision Airlines and Valley Flying Serv. Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619 (1993).

Both the Atlas and Polar CBAs require a separation of operations until the single CBA can be negotiated and implemented. ALPA has presented a combined seniority list to AAWW thereby starting a nine-month clock for direct negotiations for a single CBA. The CBAs provide that when the single CBA is implemented, the already integrated seniority lists will be implemented. The Board's substantial integration of operations criteria does not require total integration of operations. *US Airways/America West Airlines*, 35 NMB 65 (2008); *Air Methods/CJ Sys.*, above; *American Airlines, Inc./TWA Airlines, LLC*, 29 NMB 201 (2002); *Mountain Air Express/Air Wisconsin Airlines Corp.*, 26 NMB 185 (1999). The Board will not decline to find a single transportation system due to the absence of a single CBA.

There is substantial overlap among the members of Atlas' and Polar's Boards of Directors, and many senior management individuals hold positions with both Carriers. Atlas and Polar have consolidated their human resources and labor relations functions, and both Atlas and Polar employees are subject to the same personnel policies and employee handbook. Atlas and Polar have centralized employee recruitment and training will be combined. Additionally, most of the Carriers' employees are cross-utilized. Uniforms will be standardized upon implementation of the single CBA. Although Atlas and Polar will continue to operate under their own separate brands, AAWW publications identify the close link between the Carriers. Finally, Atlas and Polar allocate aircraft interchangeably depending on customer needs.

Based on the application of the principles cited above to the facts established by this investigation, the Board finds that Atlas and Polar operate as a single transportation system for representation purposes for the Flight Deck Crewmembers craft or class.

CONCLUSION

The Board finds that Atlas and Polar are operating as a single transportation system for representation purposes under the RLA. Accordingly, the IBT's application in File No. CR-6937 is docketed as NMB Case No. R-7174. Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of the proper craft or class. The IBT and any other interested organizations have 14 days from the date of this determination to file an application supported by a showing of interest of more than 50 percent of the single transportation system or to supplement the showing of interest in accordance with Manual Sections 19.601-19.603. The Participants are reminded that existing certifications remain in effect until the Board issues a new certification or dismissal. Manual Section 19.7.

By direction of the NATIONAL MEDIATION BOARD.



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