



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Applications of the

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AIRLINE
DIVISION AND
THE ASSOCIATION OF FLIGHT
ATTENDANTS-CWA, AFL-CIO

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

CHAUTAUQUA
AIRLINES/SHUTTLE AMERICA/
REPUBLIC AIRLINES/MIDWEST
AIRLINES/FRONTIER
AIRLINES/LYNX AVIATION

37 NMB No. 32

CASE NOS. R-7237 and
R-7238
(File No. CR-6962)

FINDINGS UPON
INVESTIGATION

March 11, 2010

This determination addresses the applications filed pursuant to the Railway Labor Act (RLA)¹ by the International Brotherhood of Teamsters, Airline Division (IBT) and the Association of Flight Attendants-CWA, AFL-CIO (AFA-CWA). The IBT requests the National Mediation Board (NMB or Board) to investigate whether Chautauqua Airlines (Chautauqua), Shuttle America (Shuttle), Republic Airlines (RA), and Midwest Airlines (Midwest) are operating as a single transportation system known as Republic Airways Holdings, Inc. (Republic) for the craft or class of Flight Attendants. The AFA-CWA filed an application to represent the craft or class of Flight Attendants at Frontier

¹ 45 U.S.C. §151, *et. seq.*

Airlines (Frontier).² The application was combined with the IBT's and the Board considered whether Chautauqua, Shuttle, RA, Midwest, Frontier, and Lynx are a single transportation system known as Republic.

The investigation establishes that Chautauqua, Shuttle, RA and Midwest (now MWA) are operating as a single transportation system (Republic) for the craft or class of Flight Attendants. The evidence does not establish that Frontier and Lynx are part of the single transportation system at this time.

PROCEDURAL BACKGROUND

On July 27, 2009, Republic notified the Board of the pending acquisition of Midwest and stated: "The parent company of Midwest will be merged into Republic, with Republic as the surviving entity. Midwest will be thus become a subsidiary of Republic, along with its three other airline subsidiaries, Chautauqua Airlines, Republic Airlines, and Shuttle America. The projected date of closing for the transaction is July 31, 2009."

On September 14, 2009, the IBT filed an application alleging a representation dispute involving the craft or class of Flight Attendants. The IBT represents the Flight Attendants at Chautauqua (R-6225). *Chautauqua Airlines, Inc.*, 21 NMB 100 (1995). All Chautauqua, Shuttle, and RA Flight Attendants are covered by one collective bargaining agreement (CBA) between the IBT and Republic, and are all subject to one seniority list. The Flight Attendants at Midwest are represented by the AFA-CWA (R-6657). *Midwest Airlines, Inc.*, 31 NMB 175 (2004).

The application was assigned NMB File No. CR-6962. On September 15, 2009, the Board requested that the Carrier provide information regarding its operations, and assigned Cristina A. Bonaca to investigate. On September 29, 2009, AFA-CWA filed a position statement opposing the IBT's application as premature, "as the carriers have not merged with respect to crew staffing, labor relations, aircraft markings, or for any other operational purpose." In addition, AFA-CWA opposed the application because of the pending acquisition of Frontier and Lynx. On October 5, 2009, the Carrier provided information in response to the Board's September 15, 2009 docket letter.

² Lynx Aviation (Lynx) was not included in AFA-CWA's application, but it is a wholly-owned subsidiary of Republic and was acquired as part-and-parcel of the acquisition of Frontier.

On September 24, 2009, the Board received notice of the pending acquisition of Frontier and Lynx by Republic. The letter stated: “The parent company of Frontier and Lynx will be merged into Republic, with Republic as the surviving entity. Frontier and Lynx will thus become subsidiaries of Republic, along with its other airline subsidiaries, Chautauqua Airlines, Republic Airlines, Shuttle America, and Midwest. The projected date of closing for the transaction is October 1, 2009.”

On October 2, 2009, AFA-CWA filed an application alleging a representation dispute involving the craft or class of Flight Attendants at Frontier, who are currently unrepresented. The AFA-CWA currently represents the Flight Attendants at Lynx (R-7180). *Lynx Aviation, Inc.*, 36 NMB 58 (2009). The application was combined with NMB File No. CR-6962. On October 5, 2009, Republic provided information regarding Midwest’s operations, and on October 29, 2009, Republic provided information regarding Frontier and Lynx’s operations. Republic supplemented its filings with an additional statement on November 23, 2009. IBT and AFA-CWA each filed responses on November 5, 2009 and November 23, 2009.

ISSUES

Are Chautauqua, Shuttle, RA, Midwest, Frontier, and Lynx operating as a single transportation system known as Republic? If so, what are the representation consequences?

CONTENTIONS

IBT

The IBT urges the Board to find that Chautauqua, Shuttle, RA, Frontier, and Lynx are operating as a single transportation system. All subsidiaries are wholly owned by Republic, but each is a separate corporate entity with its own FAA operating certificate. According to IBT, the entities are operating as a single transportation system as evidenced by substantial operational integration, common control and ownership, and combined management and labor relations.

The IBT represents the Flight Attendants at Chautauqua and the current CBA became effective on September 1, 2005. Republic is a signatory to a side letter binding it to Article 1 (Scope) of the Flight Attendant CBA, and it requires Republic and all subsidiaries to be covered by the CBA. Therefore, in IBT’s

view, “although the IBT has not previously applied for a single carrier finding and certification covering their operating carriers, Chautauqua, Republic and Shuttle America have been operated as a single carrier with one CBA and one flight attendant seniority list.”

IBT contends that Midwest has effectively been extinguished as it ceased all operations as of November 3, 2009, and its FAA operating certificate was reissued as Republic d/b/a Midwest Airlines (MWA). For these reasons, IBT states that Midwest is not part of Republic’s single transportation system.

IBT states that, unlike Midwest, Frontier and Lynx will retain their FAA operating certificates and will be operating subsidiaries of Republic. IBT refutes AFA-CWA’s contention that Frontier’s status as a “low-cost mainline carrier” and Chautauqua/Republic/Shuttle’s status as “regional carriers” prevents a single system finding, and cites to prior Board decisions and the fact that the RLA speaks simply to “carriers by air” and does not distinguish between “regional” and “mainline” carriers. *Continental Airlines/Continental Express*, 20 NMB 326 (1993).

AFA-CWA

AFA-CWA argues that it is premature to include Midwest in Republic’s single transportation system, as the only indicia of a single system is one of shared ownership. AFA-CWA contends that Midwest has not yet merged with Republic with respect to crew staffing, labor relations, aircraft markings, or for any other operational purposes. As of late September, AFA-CWA contends that Flight Attendants on the respective carriers were wearing different uniforms, and the markings on the aircraft have not yet been integrated. In addition, Midwest Flight Attendants continue to work subject to the AFA-CWA/Midwest CBA, while Republic’s Flight Attendants are working under their respective CBA. In addition, no seniority lists have been merged.³ AFA writes: “Whether these carriers will constitute a single carrier in the future should be decided when operational integration has actually been completed.” See *Air Tran Airways*, 25 NMB 24, 31 (1997); *Frontier Airlines*, 24 NMB 635 (1997).

AFA-CWA also does not agree with the Board’s decision to consolidate the Frontier application with the Midwest/Republic matter and submits that the Frontier election “should be immediately processed as a separate

³ Arbitrator Fred Horowitz is currently deciding whether Republic must honor AFA-CWA’s CBA with the Midwest Flight Attendants.

representation dispute.” AFA-CWA contends that Frontier and Lynx are separate airlines, flying under their distinct markings/liveries, and under their own FAA operating certificates. Since the acquisition of Frontier/Lynx, operations have not been consolidated with Republic except for labor relations oversight.

In addition, AFA-CWA asserts that Frontier and the Republic carriers are inappropriate for merger as Republic’s subsidiaries are not flown under a common brand or livery, and Frontier/Lynx publicly will operate “in a similar manner” as they did pre-merger. Declarant for the AFA-CWA, aviation expert Daniel Atkins, stated that Republic is “not really an ‘airline’ but a collection of disparate air carrier operations.” In contrast, Frontier is a well-known Denver based major airline that markets itself as an independent carrier and has the full-service operational infrastructure of a legacy carrier. Atkins states that there has never been an instance in the airline industry where there has been “an operational merger completed, or even attempted, between mainline and regional carriers, or their employees.”

Republic

Republic states that Midwest as a carrier has been dissolved and RA has replaced the aircraft operations of Midwest using its current assets and is now operating as MWA. Further, Republic argues that the single carrier currently composed of Chautauqua, Shuttle, and RA (now MWA) will continue to exist in its current form. In addition, Republic states that the former Midwest Flight Attendants have seniority integration rights and a place on the Republic Flight Attendant seniority list, even if their placement has not yet been determined. “So, although no Midwest flight attendant has any expectation of recall to Midwest because it is no longer an airline, they *do* have a reasonable expectation of recall to a position at one of the [Republic] carriers, subject only to resolution of the seniority integration process.” Therefore, Republic maintains that the former Midwest Flight Attendants should be eligible voters and included within the craft or class of Flight Attendants when the Board determines the showing of interest requirement in this matter.

Republic argues that Frontier and Lynx have become part of its single system of subsidiaries including Chautauqua, Shuttle and MWA. Frontier and Lynx will continue to operate under their separate FAA operating certificates just as Chautauqua, Shuttle, and MWA do. Management, operations, and labor relations at Frontier/Lynx will be integrated as with Republic’s other subsidiaries. While flights and marketing will be integrated to allow code-

sharing between Republic subsidiaries and Frontier/Lynx, flights will still be marketed under the Frontier/Lynx brand, Flight Attendants will continue to wear Frontier/Lynx uniforms, and planes will still fly under the Frontier/Lynx distinctive wildlife liveries. The seniority list of Frontier and Lynx Flight Attendants will be integrated into the joint Republic Flight Attendant seniority list.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. §§ 151-188. Accordingly, the Board finds as follows:

I.

Chautauqua, Shuttle, MWA (RA d/b/a Midwest), Frontier, and Lynx are common carriers as defined in 45 U.S.C. § 181.

II.

IBT and AFA-CWA are labor organizations as provided by 45 U.S.C. § 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

The facts were provided through the participants' position statements, a declaration from Republic's Vice President of Labor Relations, Ronald C. Henson, and two declarations from Air Transport Economist Daniel W. Atkins. In addition, facts were acquired from Republic's website at <http://www.rjet.com/>.

Background

Republic, based in Indianapolis, Indiana, is an airline holding company which offers scheduled passenger service through its subsidiary airlines. Historically, all of the airlines' flights were operated under their airline partner brand through code-share agreements. Republic, organized in 1996, began as Chautauqua in 1973. Chautauqua currently provides regional lift for a number of mainline carriers including Delta Airlines, United Airlines, Continental Airlines, and American Airlines. In May of 2005, Republic purchased Shuttle which currently provides codeshare for Delta Airlines and United Express. RA was established by Republic to operate aircraft with 76 or more seats and began operations in 2005. RA currently provides code-share for US Airways, Frontier and Midwest and now operates as RA d/b/a Midwest or MWA.

Republic describes itself on its website, www.rjet.com/history.html:

As of today, Republic Airways Holdings owns Chautauqua Airlines, Frontier Airlines, Lynx Aviation, Midwest Airlines, Republic Airlines and Shuttle America, collectively "the airlines." The airlines offer scheduled passenger service on approximately 1,600 flights daily to 121 cities in 44 states, Canada, Costa Rica, and Mexico under branded operations at Frontier, Midwest, and through fixed-fee airline services agreements with five major U.S. airlines. The fixed-fee flights are operated under an airline partner brand, such as AmericanConnection, Continental Express, Delta Connection, United Express, and US Airways Express. The airlines currently employ approximately 11,000 aviation professionals and operate 288 aircraft.

A. Corporate Transactions

On July 31, 2009, Midwest was acquired by and merged into Republic, with Republic as the surviving entity. Midwest thus became a subsidiary of Republic, along with its three other airline subsidiaries, Chautauqua, Shuttle and RA. All Midwest aircraft were removed from service as of November 3, 2009. Counsel for Republic stated in its October 5, 2009 statement that:

Midwest will surrender its [FAA] Operating Certificate to the Department of Transportation and return its IATA designator code of "YX" to that agency. At that point Midwest will cease to exist as an air carrier, as it will have neither operational aircraft nor an operating certificate Republic will then seek permission to operate RA as RA d/b/a Midwest Midwest will eventually be dissolved and Republic Airlines will replace the aircraft operations of Midwest using its current assets and operate as Republic Airlines d/b/a Midwest Airlines [MWA].

In Republic's October 29, 2009 submission, it noted that the International Air Transport Association (IATA) had granted its request to reissue the "YX" code to Republic, allowing RA to operate as Republic d/b/a Midwest Airlines [MWA].

Midwest's website, <http://www.midwestairlines.com/AboutUs/Company.aspx>, is linked from Republic's website, and provides:

Our partnership with Frontier Airlines – our sister airline under the ownership of Republic Airways – provides our customers with additional benefits. Our codeshare program with Frontier provides a wider choice of travel destinations and additional flight options and connection possibilities, along with the convenience of booking your entire flight on a single ticket. And our frequent flyer partnership allows members of the Midwest Miles and Frontier Early Rewards programs to earn and redeem miles on either airline. . . .

Republic Airlines operates 76-seat Embraer 170 and 99-seat Embraer 190 aircraft as Midwest Airlines. . . .

Chautauqua Airlines does business as Midwest Connect, operating 37-seat Embraer 135 and 50-seat Embraer 145 regional jets.

On October 1, 2009, the parent company of Frontier and Lynx was acquired and merged into Republic, with Republic as the surviving entity. Frontier and Lynx became wholly-owned subsidiaries of Republic, along with its other airline subsidiaries, Chautauqua, Shuttle and MWA. Frontier and Lynx will continue to operate under separate FAA operating certificates just as Shuttle, Chautauqua, and MWA do. Frontier is described at Republic's website, <http://www.rjet.com/sub-frontier.html>, below:

Frontier Airlines is a wholly-owned subsidiary of Republic Airways Holdings Inc, an airline holding company that owns Chautauqua Airlines, Lynx Aviation, Midwest Airlines, Republic Airlines and Shuttle America.

Frontier is the second-largest carrier at Denver International Airport, employing approximately 5,000 aviation professionals. . . . Frontier offers routes to more than 50 destinations in the U.S., Mexico and Costa Rica. In addition, Frontier and Midwest have a codeshare partnership that allows passengers of both airlines access to 70 destinations in the U.S., Mexico and Costa Rica.

On February 4, 2010, Republic announced in a press release that it would transition the regional service operated by Lynx Q400 turboprop aircraft to Embraer 170 and 190 jet service operated by Republic. Republic plans to remove three turboprop from service effective April 6, and another three on April 19. Republic stated that:

Service will continue to all current Lynx destinations with the exception of Fargo, N.D. and Tulsa, Okla., where the Company will cease operations on April 5. These changes will result in the reduction of approximately 175 positions at Lynx, including flight

crews, operations, customer service, and support personnel. Most employees affected by this announcement will have the opportunity to continue with either Republic or Frontier in similar capacities. . . . Lynx employees have done an outstanding job [but] after extensive analysis and months of effort to grow the business, we [Republic] concluded that we could not efficiently operate a fleet of 11 Q400 aircraft. . . . These changes will better position the Company to sustain the kind of growth we've already begun and that our employees and customers expect as we continue our work to rebuild and expand the Frontier and Midwest networks.

A February 5, 2010 article from the Denver Post stated that out of Lynx's approximately 110 Flight Attendants, 40 will be retained until September at which time they will be furloughed.

As of December 31, 2009, the employee counts for the craft or class of Flight Attendants at the various carriers are as follows:

<u>Carrier</u>	<u>Active</u>	<u>Furloughed</u>
Chautauqua	390	0
Shuttle	511	0
RA	750	0
Midwest	0	402 (29 of whom are active and have been hired by RA)
Frontier	870	35
Lynx⁴	114	0

⁴ These numbers do not reflect the recent announcement and furlough of Lynx employees.

B. Management

With respect to the craft or class of Flight Attendants, since November 3, 2009, the in-flight management of MWA consists of the same management team previously at RA and has responsibility for all Midwest Flight Attendants and all RA Flight Attendants

According to VP of Labor Relations Henson, Frontier's management has already been integrated with Republic. Henson stated that as Frontier and Lynx are wholly-owned subsidiaries, Republic has the ability to appoint Frontier's and Lynx's officers and directors and has exercised that authority. The Boards of Directors of Republic, and Frontier and Lynx, are comprised of the same individuals. Mr. Bryan Bedford, the President and CEO of Republic, replaced Frontier's former President and CEO and now is the CEO of Frontier and Lynx. Wayne Heller, the COO of Republic, is also the COO of Frontier and Lynx. Sean Menke, the President and CEO of Frontier at the time of the acquisition, has surrendered the position and become a Vice President at Republic.

Frontier and Lynx, like the other Republic carriers, have appropriate personnel filling the five mandatory FAA positions (directors of operations, safety, quality assurance and maintenance; and chief pilot). These individuals at Frontier and Lynx, like their peers at the other Republic carriers, have reporting responsibility to senior management at Republic.

Henson stated that: "There is a thoroughly interlocking executive management structure at [Republic] and all of its airline subsidiaries through which [Republic] exercises extensive strategic and operational control. This control reaches operational departments such as flight operations, in-flight, maintenance and customer service functions. Labor and employee relations in all of [Republic's] airline subsidiaries is also centrally controlled and directed by [Republic]."

C. Labor Relations/ Personnel Functions/Representation

Labor relations and personnel functions for MWA, Frontier, and Lynx Flight Attendants will be administered by and through Republic. With respect to the craft or class of Flight Attendants, Frontier has its own in-flight department that has reporting responsibility to Wayne Heller (COO of Republic,

Frontier, and Lynx). Hal Cooper, Republic's CFO, has responsibility for human resources functions at Frontier and Lynx.

Republic's VP of Labor Relations Henson controls labor relations, operations and human resources functions at Frontier, Lynx, and the other Republic carriers. Labor relations personnel at Frontier and Lynx take their direction from Henson. In addition, senior management for operational departments at Frontier and Lynx (e.g. flight operations, in-flight and maintenance), must coordinate with Henson when addressing significant questions pertaining to labor relations.

Employee job postings for all subsidiaries can be found in a central location at Republic's website www.ultirecruit.com/REP1003/jobboard/ListJobs.aspx?_VT=ExtCan. On January 15, 2010, job postings were available at Frontier, RA (now MWA), as well as generally at Republic. In addition, as of January 15, 2010, Frontier continued to have its own website portal which posted opportunities at Frontier and Lynx. https://frontierrecurit.flyfrontier.com/OA_HTML/OA.jsp?OAFunc=IRC_VIS_HOME_NEW_JOBS&_ti=1586683018&oapc=2&oas=McW5FrXIMPlHHtIqn5z7g.

Midwest's website, www.midwestairlines.com/AboutUs/Careers.aspx, provides links to Republic's job posting forum as well as to Frontier's job posting forum. It provides:

We are in the process of combining the cultures of several airline groups. Midwest Airlines and Frontier Airlines are joining together to promote a shared vision of excellence in aviation as part of Republic Airways family. . . .

If you share these values, are driven to excel in the performance of your job duties and want to be part of one of these top-rated companies in the travel industry, please apply for open positions across our combined network.

Search for Jobs on the combined network:

[View Midwest and Frontier Jobs](#)

[View Republic Jobs](#)

Henson stated that there has been a significant operational merger between Frontier and Lynx and the other Republic carriers. All customer service employees for all Republic carriers are on a merged seniority list, and all customer service functions are consolidated at Frontier. All customer service employees for the Republic entities are employees of Frontier as of January 1, 2010. Another example of the operational merger is that Frontier's heavy maintenance, previously done in Denver, is being transferred to Milwaukee in an effort to rationalize Republic's operations.

Henson noted that there has been significant progress towards integrated seniority lists for other crafts or classes. The procedural processes have been agreed upon for integration of the Frontier and Lynx Pilots into the Republic Pilot seniority list. If no agreement is reached through direct negotiations, a final arbitrated list is slated to be issued no later than May 31, 2010.

The IBT represents the Flight Attendants at Chautauqua (R-6225). *Chautauqua Airlines*, 21 NMB 100 (1995). All Chautauqua, Shuttle, and RA Flight Attendants are covered by one CBA between the IBT and Republic, and are all subject to one seniority list. The Flight Attendants at Midwest are represented by AFA-CWA (R-6657). *Midwest Airlines, Inc.*, 31 NMB 175 (2004). The Flight Attendants at Lynx are also represented by the AFA-CWA (R-7180). *Lynx Aviation, Inc.*, 36 NMB 58 (2009). The Flight Attendants at Frontier are currently unrepresented.

With respect to the craft or class of Flight Attendants, meetings have already been conducted among the representatives of all Republic Flight Attendant groups (including the currently unrepresented Frontier Flight Attendants, and with AFA-CWA as the representative of the Midwest and Lynx Flight Attendants) to further the integration of the Midwest, Frontier, and Lynx Flight Attendants into the Republic Flight Attendant seniority list (which includes Chautauqua, Shuttle and RA Flight Attendants). Henson states that all Midwest Flight Attendants at the time of its acquisition by Republic are being accorded seniority integration rights, and subject to the completion of the seniority integration process, will have a place somewhere on the Republic Flight Attendant seniority list. No other labor protective provisions apply or have been agreed on.

D. Marketing/Reservations/Ticketing

Republic states that the single carrier currently comprised of Chautauqua, Shuttle, and RA will continue to exist in its current form.

Midwest has ceased doing business and will cease to exist as an airline. RA will operate as MWA and will include operations previously flown by Midwest.

To the extent that MWA performs flying under code-sharing agreement with legacy or other air carriers, those operations will be in aircraft that have livery, and that are marketed and scheduled, appropriate to that code-share agreement. MWA will also have operations that are held out to the public and marketed as operations by “Midwest Airlines.”

Republic’s intention is to maintain Frontier’s brand and passengers will be able to book flights on Frontier just as they did before its purchase by Republic. The difference will be that Republic will be rationalizing the services provided by affiliated Republic carriers, including Frontier and Lynx. Code-share and other marketing relationships are being established so that a passenger could, for example: book a two-segment trip on Frontier, and fly one leg on Frontier and the other on MWA; or book a flight on MWA and fly on Frontier; or book a flight on Frontier, and fly on MWA.

E. Routes and Schedules

Henson stated that all strategic planning for Republic’s branded operations (Frontier, Lynx, MWA) is centrally coordinated and controlled by Republic. All questions about aircraft acquisitions, distribution and allocation among all Republic airlines subsidiaries, including Frontier and Lynx, are decided by Republic. For example, Frontier does not independently decide the city pairs to which it provides service; that is decided by Republic. While there may be routes and schedules operated by Frontier and Lynx that will remain unchanged, those routes and schedules will be maintained because of decisions made and implemented by Republic.

There will be a single route system and schedule marketed as “Midwest Airlines.” MWA’s operations that are conducted pursuant to code-share agreements with other carriers will be along the routes, and pursuant to the schedules, dictated by the agreements and/or by the code-share partner.

Republic states that its goal is to “produce a more synergistic operation” for its affiliates. It states that Frontier and Lynx will continue to operate some of their current routes and schedules but “changes will be made in order to optimize operational and cost efficiency,” which could include other Republic carriers operating some current Frontier/Lynx routes and schedules.

F. Uniforms

Midwest's uniforms will be standardized. Frontier and Lynx Flight Attendants, for the present, will continue to wear their existing uniforms.

G. Equipment

In November 2009, after Midwest's acquisition by Republic, its five (5) Boeing 717 aircraft were removed from service and returned to Boeing.

All MWA aircraft will be marketed as "Republic Airlines d/b/a Midwest Airlines." The aircraft that are operated and marketed as "Midwest Airlines" will have Midwest livery. The aircraft that are operated under code-share agreements will have livery appropriate to the applicable code-share agreement. The markings on aircraft and other equipment of Chautauqua and Shuttle will remain unchanged.

Declarant Atkins stated that since Midwest's acquisition, Republic has replaced all Midwest aircraft with its own aircraft and is flying them on Midwest established route network routes. In addition, Atkins asserted that since its acquisition of Frontier, Republic has utilized Frontier aircraft and crews to fly Midwest flights on Midwest routes.

Republic expects that Frontier and Lynx will keep their wildlife-themed liveries, and because they will continue to operate under their own separate FAA operating certificates, Frontier and Lynx aircraft will continue to have livery that identifies the operator as Frontier or Lynx. When operating under a code-share agreement with Frontier, MWA will have the Midwest livery.

H. Insignia and Logos

The corporate insignia and logos for Chautauqua and Shuttle will remain unchanged. The corporate insignia and logos for RA will be changed to reflect its status as "Republic Airlines d/b/a/Midwest Airlines" (MWA). Frontier and Lynx will retain their current corporate insignias.

VP Henson stated that while Frontier and Lynx will retain their corporate identities, liveries, and logos, "the code-sharing agreements and operational integration between the various [Republic] airlines will blur the distinctions between the [Republic] carriers from the passengers' point of view." For example, a passenger who books a flight between two points on Frontier could

fly on an aircraft operated by MWA. Or a passenger who has booked a flight on Midwest could fly on an aircraft operated by Frontier.

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. M.K.T. R.R. Co.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. v. Nat'l Mediation Bd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines, Inc.*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "[t]he NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

II.

Single Transportation System

The Board's Representation Manual (Manual) Section 19.4 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. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88 (2009); *Florida N. R.R.*, 34 NMB 142 (2007); *GoJet Airlines, LLC and Trans States Airlines, Inc.*, 33 NMB 24 (2005); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005). 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). The Board's substantial integration of operations criteria does not, however, require total integration of operations. *Allegheny Airlines, Inc. and Piedmont Airlines, Inc.*, 32 NMB 21, 28 (2004).

All subsidiaries are wholly owned by Republic, but each holds its own FAA operating certificate. The Boards of Directors of all the subsidiaries are comprised of the same individuals. Bryan Bedford, the President and CEO of Republic, is now the CEO of Frontier and Lynx. Wayne Heller is the COO of Republic, Frontier, and Lynx. VP of Labor Relations Ron Henson controls labor relations and HR functions at all of Republic's subsidiaries. Management at all of Republic's subsidiaries has been integrated and has reporting responsibilities to senior management at Republic. This type of consolidation of senior managers, personnel functions and labor relations are often indicia of single transportation systems. See *Atlas Air, Inc./Polar Air Cargo Worldwide, Inc.*, 35 NMB 259, 269 (2008) (single system found in spite of separate operating certificates and separate flight-related management).

There has been some progress towards an operational merger in terms of the employee groupings. The Flight Attendants at Chautauqua, Shuttle and RA are operating from a central seniority list, CBA, and side-letter. Meetings have been conducted in an attempt to integrate the Flight Attendants from Midwest, Frontier, and Lynx into the Republic Flight Attendant seniority list, and Republic contends that all former Midwest Flight Attendants will be given seniority integration rights. All customer service employees for all the Republic carriers have been placed on a merged seniority list, and all customer service functions are consolidated at Frontier. The procedural processes for integrating the Frontier and Lynx Pilots with the Republic Pilot's seniority list have been agreed upon and negotiations are underway. The Board has previously held that delaying a finding of a single transportation system until CBAs were in place, if supported by other factors, is contrary to the RLA's purposes of promoting labor stability. See *US Airways/America West Airlines*, 35 NMB 65, 78 (2008); *American Airlines, Inc./TWA Airlines, LLC*, 29 NMB 201, 212 (2002).

According to Vice President of Labor Relations Henson, Republic exercises control over the management, labor relations, and human resources functions of all of its subsidiaries. Republic also controls the operations of all of its subsidiaries, including flight operations, in-flight, maintenance, and customer service functions. As such, Republic centrally coordinates and controls issues involving aircraft acquisitions, distribution, and allocation among its subsidiaries. In *Flagship Airlines, Inc.*, 22 NMB 331 (1995), the Board found a single transportation system to exist primarily because of the significant degree of "common control" exercised by Eagle over its subsidiaries. *Id.* at 426. Eagle wholly-owned and centrally controlled the four subsidiaries; there existed interlocking boards of directors, common corporate officers, and common management; the carriers held themselves out to the public as a single carrier, and flight schedules and reservations were integrated; and while most employee groups were represented by separate organizations/CBAs, Eagle handled most other labor relations issues for the carriers. *Id.* at 426-30. See also *USAir, Inc and Shuttle, Inc. d/b/a USAir Shuttle*, 19 NMB 388 (1992) (single transportation system found where USAir did not own Shuttle but had a five year contract which gave extensive operational control over carriers management, labor relations, and marketing. There was no common Board or officers, but Shuttle's officers consulted with USAir on all management decisions. Flight crews were not integrated).

The subsidiaries are held out as one carrier on Republic's website, and the employees are subject to the same operational policies and most labor

relations policies (subject to differences until all employee crafts or classes are subject to the same CBAs). Prospective Chautauqua, MWA, and Shuttle employees all apply to jobs through one universal forum, at RJET.com. While Frontier/Lynx continues to operate its own job website, open positions are also posted at RJET.com and are linked from Midwest's website. Republic is rationalizing marketing and code-sharing between its affiliated carriers, so that two-segment trips can be booked on Frontier, Lynx, or MWA. Frequent flyer programs are linked so that miles can be earned or redeemed on MWA, Frontier, or Lynx. Some routes and schedules for the newly acquired carriers may remain unchanged but some changes will be made to optimize operations and cost efficiency. While Republic's subsidiaries do not fly under a common livery or with common uniforms, this is typical of an operation which provides mainly code-share service. In *Freedom Airlines, Inc.*, 30 NMB 263 (2003), the Board examined whether Freedom was operating as part of Mesa Air Group (MAG). Freedom, Air Midwest, CC Air, and Mesa Airlines were all wholly owned subsidiaries of MAG. Each code-share partner advertised the services offered on its behalf by the MAG carriers, including reservations, schedules, tickets, and livery. *Id.* at 269-70. The Board found the four carriers a single system because there were numerous interlocking directors and officers, combined labor relations and management, and a unified public image. *Id.* at 275-76.

There are a number of prior Board determinations finding a single transportation system in the absence of a single FAA operating certificate. In *Atlas Air, Inc./Polar Air Cargo Worldwide, Inc.*, 35 NMB 259, 269 (2008), the Board found a single transportation system even though the carriers had separate operating certificates and separate crews. Atlas and Polar did not combine their routes or schedules and the carriers' equipment did not have conformed markings, uniform insignia or logos. *Id.* at 267. However, there was substantial overlap among the members of the carrier's boards of directors, labor relations and operations were centralized, employees were cross-utilized, and there were plans in place for an integrated seniority list and CBA. *Id.* at 269. See also *Continental Airlines/Continental Express*, 20 NMB 326 (1993) (Board found a single system through common control, common ownership, shared common officers, and centralized management and labor relations even though the carriers had separate FAA operating certificates); See also *Midway Airlines, Inc.*, 14 NMB 447 (1987) (two carriers which existed as separate corporate entities and operated under separate FAA operating certificates were nevertheless, based on their combined operations, found to be a single transportation system).

The Board finds that Republic exercises sufficient common control over its subsidiaries, Chautauqua, Shuttle, and MWA to form a single transportation system for representation purposes. While Chautauqua, Shuttle, and MWA continue to operate with their own operating certificates, all Flight Attendants are working under one seniority list and one CBA. In addition, management and Board of Directors are overlapping and Republic has total operational control over Chautauqua, Shuttle, and MWA.

Based upon the application of the principles cited above to the facts established by the investigation, the Board find that Chautauqua, Shuttle, and MWA are operating as a single transportation system known as Republic.

At this time, there is insufficient evidence of operational integration to find Frontier and Lynx part of the Republic single system. This decision is based on the facts and circumstances of this case. Future changes on the carriers may lead to a different result. *See Allegheny Airlines, Inc.*, 29 NMB 160 (2002).

CONCLUSION

The Board finds that Chautauqua, Shuttle, and MWA are operating as a single transportation system for representation purposes under the RLA. Accordingly, the IBT's application in File No. CR-6962 is converted to NMB Case No. R-7237. Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of this craft or class. Any Intervenor has 14 calendar days from the date of this determination to file an application supported by a showing of interest of at least 35 percent of the single transportation system or to supplement the showing of interest in accordance with Manual Sections 19.601 and 19.603. The participants are reminded that under Manual Section 19.7, existing certifications remain in effect until the Board issues a new certification or dismissal.

Republic is directed to provide an **alphabetized list of potential eligible voters** as a **Microsoft Excel file** as described below. The List should include Flight Attendants at Chautauqua Airlines, Shuttle America, Republic Airways, and Midwest Airlines.

Republic **must inform the Investigator of the date of the last day of its last payroll period prior to September 14, 2009** and the number of employees covered by this application. The list of potential eligible voters must contain **all individuals with an employee-employer relationship as of the**

last day of the last payroll period prior to September 14, 2009. The list must be **alphabetized** on a system-wide basis. The Carrier must provide a copy of the list to the organization(s). Republic must provide **one set of signature samples for the eligible voters solely to the Investigator.** The alphabetized signature samples must be in the same order as the names on the list of eligible voters. Until an applicable list and the signature samples are received by the Investigator, the Investigator will **continue to accept additional authorization cards.**

The Board finds that Frontier and Lynx are not part of the single system at this time and accordingly AFA-CWA's application in File No. CR-6962 is converted to NMB Case No. R-7238. Frontier is directed to provide the Board's Office of Legal Affairs with an **alphabetized list of potential eligible voters** as a **Microsoft-Excel file.**⁵ The format of the list of potential eligible voters must be prepared in five columns or fields exactly as shown on the NMB website at <http://www.nmb.gov/documents/xls-template.html>. There must not be any other information or data in the file except as displayed in the five columns or fields on the sample format. The column or field headers must be contained on one row only. The Carrier must not include any **hidden** columns or fields in the **Excel file.** Note that employee middle initials appear with the first name. Do not make a separate column or field for the middle initial.

Frontier **must inform the Investigator of the date of the last day of its last payroll period prior to October 2, 2009** and the number of employees covered by this application. The list of potential eligible voters must contain **all individuals with an employee-employer relationship as of the last day of the last payroll period prior to October 2, 2009.**⁶ The list must be **alphabetized** on a system-wide basis. The Carrier must provide a copy of the list to the organization(s). Frontier must provide **one set of signature samples for the eligible voters solely to the Investigator.** The alphabetized signature samples must be in the same order as the names on the list of eligible voters.

⁵ The List should only include Frontier's Flight Attendants.

⁶ Section 9.2 of the NMB's Representation Manual defines the categories of individuals with an employee-employer relationship under the RLA. That section of the Manual is available at <http://www.nmb.gov/representation/representation-manual.pdf>.

Until an applicable list and the signature samples are received by the Investigator, the Investigator will **continue to accept additional authorization cards.**

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson
General Counsel

Copies to:

Andrew McClintock, Esq.
Ronald Henson, Esq.
Barry Schimmel
Nicolas Manicone, Esq.
William Wilder, Esq.
Edward Gilmartin, Esq.
Deirdre Hamilton, Esq.

Chairman Dougherty, dissenting in part and concurring in part.

I concur with the decision of the Board finding Chautauqua, Shuttle, and MWA a single transportation system known as Republic. I dissent from the decision not to include Frontier and Lynx as part of the Republic system for the following reasons.

The cases and pertinent facts presented by the Board which support Chautauqua, Shuttle, and MWA's inclusion in the single system, also support the inclusion of Frontier and Lynx. *Continental Airlines/Continental Express*, 20 NMB 326 (1993). Republic exercises sufficient common control over Frontier and Lynx, in management, labor relations, human resources, and operations. *Flagship Airlines, Inc.*, 22 NMB 331 (1995); *USAir/Shuttle*, 19 NMB 388 (1992). Frontier and Lynx are wholly-owned subsidiaries of Republic, with overlapping Boards of Directors, and integrated management. *Atlas Air, Inc./Polar Air Cargo Worldwide, Inc.*, 35 NMB 259 (2008). Meetings have been conducted in an attempt to integrate the Flight Attendants from Frontier and Lynx into the Republic Flight Attendant seniority list, providing evidence of progress towards an operational merger of employee groupings. Frontier is listed as a subsidiary of Republic on its website and employees can apply for jobs on Frontier through Republic's job forum or through Frontier's own job website. Frequent Flyer programs are linked so that miles can be redeemed on Frontier, MWA, or Lynx.

The only discernable difference between facts supporting the Chautauqua, Shuttle, MWA single carrier determination and the Frontier/Lynx situation is that Republic acquired Frontier and Lynx on October 1, 2009, and acquired Midwest on July 31, 2009 – a mere two months apart. The corporate merger of Frontier and Lynx is complete and there has been significant progress towards an operational merger.

The cases cited by the AFA-CWA in support of Frontier and Lynx being separate from the Republic system are not analogous. In *Air Tran Airways*, 25 NMB 24 (1997) and *Frontier Airlines*, 24 NMB 635 (1997), the main factor in the Board not finding a single transportation system in those cases was the fact that the merger *had not yet occurred* and therefore was truly prospective. As discussed above, the corporate merger of Frontier and Lynx with Republic is complete and there has been significant progress towards an operational merger.

Finally, I dissent because there have been significant factual developments involving the subsidiaries of Republic⁷ and in the interest of caution, I would support requesting additional briefing from the participants about recent developments that may support or detract from finding a single transportation system. See Board Representation Manual Section 19.5, Merger Investigations (After an application is filed, the NMB will conduct a pre-docket investigation to determine whether a single transportation system exists. The investigation may take any form appropriate to the determination.).

The Majority states in its decision: “Future changes on the carriers may lead to a different result.” As the trite saying goes – the future is now. It is irresponsible and inefficient for the Board to ignore changes that have already occurred when those changes clearly have the potential to impact the single carrier determination.

⁷ *Republic Foresees ‘Unified,’ Profitable Branded Operations*, Aviation Daily, March 1, 2010 (reporting “Frontier and Midwest will become ‘unified brand’ this year.”); *Republic Announces Fleet Simplification Plan*, Yahoo Finance, February 4, 2010 (Republic announced that in April it will transition the regional service operated by Lynx turboprop aircraft to jet service operated by Republic. This change will result in the grounding of Lynx by September 2010 and the furlough of all Lynx employees. Republic COO Heller stated: “These changes will better position the Company to sustain the kind of growth we’ve already begun . . . as we continue our work to rebuild and expand the Frontier and Midwest networks.”); *Republic Airways Completes Acquisition of Frontier Airlines*, Business Wire, October 1, 2009 (“With the close of the transaction, Frontier joins . . . as a subsidiary of Republic Airways Holdings. On July 31, Republic completed its acquisition of Milwaukee-based Midwest Airlines. Republic plans to continue both the Frontier and Midwest brands while leveraging their unique strengths across the combined network. ‘We welcome Frontier into the Republic Airways family,’ said Bryan Bedford, Chairman, President and CEO of Republic.”).