



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AIRLINE
DIVISION

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

involving employees of

REPUBLIC AIRLINES/SHUTTLE
AMERICA/CHAUTAUQUA
AIRLINES/
FRONTIER AIRLINES/LYNX
AVIATION AND THE FORMER
MIDWEST AIRLINES

38 NMB No. 39

CASE NO. R-7284
(File No. CR-6995)

FINDINGS UPON
INVESTIGATION

April 7, 2011

This determination addresses the application filed pursuant to the Railway Labor Act (RLA)¹ by the International Brotherhood of Teamsters, Airline Division (IBT). The IBT requests the National Mediation Board (NMB or Board) to investigate whether Republic Airlines (RA), Shuttle America (Shuttle), Chautauqua Airlines (Chautauqua), Frontier Airlines (Frontier), and Lynx Aviation (Lynx) (collectively the Carriers) are operating as a single transportation system for the craft or class of Pilots.

The current investigation establishes that RA, Shuttle, Chautauqua, Frontier and Lynx are operating as a single transportation system (Republic

¹ 45 U.S.C. §151, *et. seq.*

Airlines et al./Frontier) for the craft or class of Pilots, and further, that Midwest Pilots are included in the single transportation system.

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 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 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 closing date for the transaction is October 1, 2009.”

On October 4, 2010, the IBT filed an application alleging a representation dispute involving the craft or class of Pilots. The IBT represents the Pilots at Chautauqua (R-6199). *Chautauqua Airlines, Inc.*, 20 NMB 567 (1993). The IBT represents the Pilots at Republic and Shuttle through a voluntary recognition agreement.

The Air Line Pilots Association (ALPA) represents the Pilots at Midwest Airlines (Midwest) (R-6549). *Midwest Express Airlines, Inc.*, 25 NMB 118 (1997). The United Transportation Union (UTU) represents the Pilots at Lynx (R-7212). *Lynx Aviation, Inc.*, 36 NMB 143 (2009). The Frontier Airline Pilots Association (FAPA) represents the Pilots at Frontier (R-6630). *Frontier Airlines*, 26 NMB 94 (1998).

The application was assigned NMB File No. CR-6995. On October 6, 2010, the Board requested that the Carriers provide information regarding its operations and assigned Cristina A. Bonaca to investigate. On October 20, 2010, the Board granted an extension for the Carriers to file its position statement and also gave the organizations a deadline for submitting their statements.

On October 26, 2010, the Carriers filed its statement with the Board. IBT, FAPA, UTU and ALPA each filed responses on November 9, 2010. All participants filed a supplemental position statement on December 1, 2010. The Board requested some supplemental information from the Carriers which was received December 20, 2010, and February 25, 2011.

ISSUES

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

CONTENTIONS

The Carriers

Republic Airways Holdings, Inc. (RAH) is the holding company that owns RA, Chautauqua, Shuttle, Frontier, Lynx, and the former Midwest and operates both “fixed fee” and “branded” operations. Each subsidiary carrier has its own operating certificate; however, RAH is in the process of transferring Lynx’s remaining fleet to the RA operating certificate. This is anticipated to be completed by early 2011, at which time RAH will surrender Lynx’s operating certificate and shut down Lynx.

Management is integrated, and all labor relations and personnel functions for the Carriers are administered by RAH under the stewardship of Ron Henson, VP, Labor Relations. RAH stated that the single carrier that currently is comprised of Chautauqua, Shuttle, and RA will continue to exist in its current form and will be held out to the public and marketed under the brand of the applicable flying partners or the Frontier brand. Frontier (and Lynx until its closing) will continue to be held out to the public and marketed under the Frontier brand.

On November 3, 2009, RAH (on behalf of itself and its wholly-owned subsidiaries, Chautauqua, Shuttle, RA, Midwest, Frontier and Lynx) entered into an agreement with its Pilots’ representatives to integrate the Pilots’ seniority. An arbitration to integrate the list occurred, with hearings and

submission of briefs. A proposed award was issued on November 5, 2010, and a final award was issued February 19, 2011².

IBT

The IBT urges the Board to find that the Carriers are operating as a single transportation system for purposes of representation of the craft or class of Pilots. All subsidiaries are wholly owned by RAH, including Frontier and Lynx whose acquisition was finalized October 1, 2009.

According to IBT, the entities are operating as a single transportation system as evidenced by substantial operational integration, common control and ownership, and overlapping senior management and labor relations at each subsidiary. The IBT also contends that Midwest has ceased operations and is not part of the single transportation system. Pilot recruiting for each of its subsidiaries is handled by RAH. In addition, IBT contends that further evidence of single carrier status is the fact that all the Pilots of the various subsidiaries have been integrated into a single seniority list. Arbitrator Dana E. Eischen issued his final award on February 19, 2011.

In IBT's estimation, "[RAH] holds out to the public that its operating carriers are part of a consolidated entity." While each of RAH's subsidiaries is a separate corporate entity with its own FAA operating certificate, their operations are all consolidated and commonly-scheduled under the Frontier brand, and they are held out as single company of affiliates on RAH's website. Further, the subsidiaries are presented on a consolidated basis for both financial reporting and operating performance.

IBT notes that both ALPA and UTU agree that Frontier is appropriately included in the single transportation system. Further, the IBT rejects FAPA's main contention that the diverse operations of Chautauqua/RA/Shuttle (fixed-fee) and Frontier (branded) make a single system finding inappropriate. In

² The final award includes Pilots from RA, Shuttle, Chautauqua, Frontier, and Lynx, and the furloughed Midwest Pilots (those holding seniority on a list but unavailable to hold a line position as of the July 31, 2009 acquisition). The arbitrator ruled that in the event that the Board finds Frontier not to be part of the single transportation system, the "integration methodology of the Award will be applied with the Frontier pilots excluded." Finally, the arbitrator held that the Integrated Master Seniority List will be effective "on the sixtieth (60th) day following the date of the National Mediation Board's rulings and certification...unless an earlier date is agreed upon by the designated pilot representative and the single carrier."

support of its position, IBT cites to a number of previous Board determinations where the Board has found mainline and regional carriers part of a single transportation system. *Continental Airlines/Continental Express*, 20 NMB 326 (1993).

Finally, the IBT contends that there have been significant steps towards the integration of Frontier into the single transportation system since the Board's March 2010 decision regarding the Flight Attendants. *Chautauqua Airlines*, 37 NMB 148 (2010). Examples of this integration include further consolidation of administrative, operational, and labor functions of Frontier into RAH at its Indianapolis, Indiana headquarters; consolidation of the Frontier employees under RAH's handbooks and policies; Frontier's website links prospective employees to the RAH website to search for open positions; and finally, there has been a combination of the branded operations by the various affiliates into the Frontier brand, which has resulted in RA and Chautauqua aircraft being painted in Frontier livery, and the flying of RA and Chautauqua planes as Frontier branded operations.

UTU

The UTU states that based on the Carriers' response to the Board's questions, "it is UTU's position [that] the integration of operations, labor relations, and other relevant areas since March 11, 2010,³ make it such that the Board should find all carriers are a single carrier for representation purposes." In its supplemental response, UTU reiterates its contention that based on the evidence presented, including full integration of management, a single labor relations officer for the Carriers, a single human resources agent for the Carriers, and the same accounting and operational integration between the "branded" side and "fixed fee" side, it is incumbent upon the Board to find the Carriers part of a single transportation system.

ALPA

ALPA contends that all of RAH's subsidiaries are a single transportation system for the craft or class of Pilots, but also argues that the Midwest Pilots are part of the single transportation system. ALPA argues that it is a well-

³ The date of the Board's decision in *Chautauqua Airlines, Inc.*, 37 NMB 148, 167, where it declined to find Frontier and Lynx part of the single transportation system for the Flight Attendant craft or class.

settled principle that only the Board may cancel a representation certification and that in situations in which carriers are acquired “existing certifications remain in effect until the Board issues a new certification or dismissal.” See NMB Representation Manual Section 19.7. While ALPA acknowledges that RAH has recently stopped selling services under the Midwest brand, it contends that RAH will continue to fly aircraft with Midwest livery through early 2011.

ALPA states that in the time frame since the Board’s findings in *Chautauqua Airlines*, 37 NMB 148 (2010), RAH has begun to integrate its Midwest and Frontier brands operationally, and is using both MWA (Republic d/b/a Midwest Airlines) and Frontier mainline planes, equipment only used in branded operations, to provide that integrated service. ALPA writes that while Midwest may have surrendered its FAA operating certificate, “it still continues to exist as a corporation, owning assets used in airline operations, such as gates, slots, reservations structure and maintenance facilities [and] ... its airline operations are being *integrated* with and into the Frontier brand, comprising around 24% of Frontier’s operations today.” As Midwest’s operations have been integrated with and into the Frontier brand, ALPA contends that the Midwest Pilots have an interest that the Board’s merger policies protect.

This ongoing integration of operations has now integrated Frontier/Lynx into the single transportation system, so that the system today includes the Carriers “plus Midwest.” ALPA believes that the intertwined nature of RAH’s two types of operations make the finding of a single transportation system the only result consistent with the RLA’s representation structure.

FAPA

FAPA contends that Frontier is not part of the single transportation system. FAPA argues, most significantly, that Frontier and Lynx are a separate system as they provide service exclusively for the “branded” business, while Chautauqua and RA provide both “branded” and “fixed fee” service, and Shuttle only provides “fixed fee” service.

FAPA additionally asserts that Frontier is a single system, and separate from RAH’s other subsidiaries, as it offers scheduled service only under its own brand, with its distinct livery on aircraft; has its own FAA operating certificate, and its own website, and; maintains separate day-to-day management below senior management at the holding company level. Also, highly relevant, in

FAPA's estimation, is the Board's decision finding that Frontier was not part of the single transportation system for the craft or class of Flight Attendants. *Chautauqua Airlines*, 37 NMB 148 (2010). As compared with Midwest and Lynx, RAH has maintained the Frontier operation and brand, and publicly commented that it considers Frontier a separate operation.⁴

In sum, FAPA urges the Board to dismiss the IBT's application with respect to Frontier as it is not part of the single transportation system.

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, RA, Frontier, and Lynx are common carriers as defined in 45 U.S.C. § 181. Prior to its operational integration, Midwest was a common carrier as defined in 45 U.S.C. § 181.

II.

IBT, UTU, ALPA, and FAPA 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

⁴ CrankyFlier.com interview with Brian Bedford, May 17, 2010, where he discusses labor integration issues and voices his opinion that a lot of the conflict is from "union versus union" but that regardless RAH will "treat everybody the same." In this context he states: "We're not merging the companies in the classic sense. We're not merging Frontier into Republic. Yeah, we own it, but it's the Airbus operator. It's always going to be the Airbus operator and CS300 operator, but it's going to be a separate certificate. . . . We're all going to sink or swim together. A lot of our Republic capacity is in our brand operation, so the brand operation better work."

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, declarations from Frontier Pilots Captain John Stemmler and Captain Jeffrey Thomas, and a number of other exhibits including documents from RAH’s website at <http://www.rjet.com/>.

Background and Corporate Transactions

RAH, based in Indianapolis, Indiana, is an airline holding company which offers scheduled passenger service through its subsidiary airlines, RA, Chautauqua, Shuttle, Frontier and Lynx – each of which has its own operating certificate. The acquisitions and corporate transactions involving RAH’s subsidiaries have been the result of a multi-step process.

On July 31, 2009, RAH acquired Midwest. On November 3, 2009, all Midwest aircraft were removed from service⁵ and Midwest ceased operations. Midwest surrendered its operating certificate and returned its designator code to the Department of Transportation. The designator code was reissued to RA, allowing RA to operate as RA d/b/a Midwest [MWA]. Midwest was a party to the agreement with RAH and its other subsidiaries, entered into November 3, 2009, to integrate Pilot seniority, and the furloughed Midwest Pilots were included in the final award issued February 19, 2011. *See supra* note 2.

⁵ As discussed in detail in the next paragraph, between November 3, 2009, and October 1, 2010, RAH conducted operations under the Midwest brand using RA and Chautauqua aircraft/crews with the Midwest livery.

On March 11, 2010, the Board issued a decision finding MWA (Midwest d/b/a Republic Airlines) part of the single transportation system for the craft or class of Flight Attendants. *Chautauqua Airlines*, 37 NMB 148 (2010). Between November 3, 2009, and October 1, 2010, RAH conducted operations under the Midwest brand using RA and Chautauqua aircraft/crews with the Midwest livery. RAH has ceased selling services under the Midwest brand and is using Frontier exclusively for branded operations. See also April 13, 2010 RAH Press Release (“Republic Airways Announces Details of Brand Unification Plan for Frontier and Midwest Airlines.”). RAH is in the process of changing the livery on all RA aircraft previously used in the Midwest branded operation to reflect the Frontier livery and this is estimated to be complete by early 2011. Following the decision to discontinue the Midwest brand, RAH is retaining the “YX” designator code but ceasing the use of the “d/b/a Midwest” designation. All Midwest aircraft removed from service in 2009 have been returned to Boeing.

Frontier and Lynx were acquired most recently, on October 1, 2009. RAH is in the process of transferring Lynx’s remaining fleet to the RA operating certificate. This process is expected to be completed by early 2011 at which time Lynx will be shut down.

RAH’s subsidiaries engage in two types of operations: 1) a “fixed-fee” operation where passengers of RAH’s mainline partners (Delta, American, United, US Airways, and Continental) are transported under the partner’s brand, code, and livery using RAH’s aircraft and crews; and 2) a “branded” operation where RAH sells services directly to the public under its Frontier brand, code, and livery. Currently, Shuttle provides service exclusively in the “fixed-fee” operation. Frontier and Lynx provide service exclusively for the “branded” operation. RA and Chautauqua operate in both “branded” and “fixed-fee” businesses. RAH’s subsidiaries are presented on a consolidated basis for both financial reporting and operating performance. See August 9, 2010 Quarterly Financial Report for Republic Airways Holdings, Inc.; September 2010 Press Release “Republic Airways Reports September 2010 Traffic.”

As of December 1, 2010, the following numbers of Pilots were employed at each of the RAH subsidiaries:

Chautauqua - 610

Shuttle - 518

RA - 792

Frontier - 680

Lynx - 34 (plus 79 on furlough)

Midwest - 344 (on furlough)

As there have been new hire openings at RA, Shuttle, and Chautauqua, these positions have first been offered to furloughed Midwest and Lynx Pilots (some of which have accepted and some of which have rejected the offers). As indicated above, there are currently 79 Lynx Pilots on furlough status. The majority of former Midwest Pilots remain on furlough.

B. Management

RAH contends that management between its subsidiaries has already been integrated. The same Board of Directors and senior management team oversee all of the Carriers. For example, Bryan Bedford is the Chairman and CEO for all the Carriers. He is also the President of RA, Shuttle, Chautauqua, and Frontier.⁶ Robert H. (Hal) Cooper is the Executive Vice President, CFO, Treasurer and Secretary, and Wayne Heller is the Executive Vice President, COO, for all the Carriers. Ron Henson is the Vice President, Labor Relations, and Kathy Wooldridge is the Vice President, Human Resources, for all the Carriers.

Beginning in 2010, Republic announced the integration of Denver-based Frontier Airlines and Milwaukee-based Midwest Airlines into the Republic operation, with the consolidation of all executive management functions in Indianapolis. A press release⁷ stated that since acquiring Midwest and Frontier, the companies have: “combined airport ground operations throughout their networks; consolidated reservations center operations from three facilities to two; initiated the relocation of Frontier’s heavy maintenance

⁶ Pending the wind-down of Lynx, Cameron Kenyon continues to be the President of Lynx.

⁷ January 14, 2010 RAH Press Release, “Republic Airways Announces Sean Menke’s Resignation; Updates Branded Operations Integration Plan.”

and operating groups to Milwaukee and Indianapolis respectively; . . . [and] enhanced their frequent flyer programs, allowing members of both programs to earn and redeem miles under either program on Frontier and Midwest flights.”

Since each carrier has its own operating certificate, each has appropriate personnel occupying the five mandatory Federal Aviation Administration (FAA) positions which report to appropriate RAH senior management. The mandatory positions include Directors of Operations, Safety, Quality Assurance, Maintenance, and Chief Pilot.

In its submission, FAPA explains that below senior management at the holding company level, Frontier retains separate day-to-day management, including a separate flight operations management structure, headed by a separate Frontier Department of Operations, and staffed by separate Senior Managers of In-flight, Customer Service, Technical Publications, Dispatch, Pilot Training, Airbus Program, Flight Standards, etc.

C. Labor Relations/ Personnel Functions

Labor relations and personnel functions for the Carriers are administered through RAH. Ron Henson, Vice President, Labor Relations oversees labor relations for all the Carriers, and all labor relations staff report to him. The same is true for personnel functions, which are overseen by Kathy Wooldridge, Vice President, Human Resources, and HR staff at all the Carriers report to her.

Employee job postings for all subsidiaries can be found in a central location on RAH’s website at <http://www.rjet.com/employment.asp>. With respect to Pilot careers, the website describes RAH’s operations and lists the type of aircraft flown by its subsidiaries and the requirements for the Pilots flying each type of aircraft, as described below.

Numbering over 280 planes, the aircraft types include Embraer E 190’s, E175’s, E170’s, ERJ-145’s and 135’s, and Airbus A320’s, A319’s and A318’s aircraft.

Our pilots are responsible for ensuring safe and timely flight operations in accordance with all Company and Federal Aviation Regulations.

HOURS QUALIFICATIONS FOR EMB & ERJ SERIES:

- + 2,000 hours Total Time (fixed wing)
- + 500 hours MEL
- + 100 hours Instrument

HOURS QUALIFICATIONS FOR AIRBUS SERIES:

- + 2,500 hours Total Time (fixed wing)
- + 1500 hours MEL
- + 500 hours turbojet or turboprop

QUALIFICATIONS FOR ALL SERIES:

- + ATP
- + 1st class medical
- + FCC restricted radio operators permit
- + Valid passport
- + Authorization to work in the US and the ability to travel unrestricted in and out of the US
- + Ability and willingness to work weekends, nights, holidays and overnight trips
- + Must maintain a well groomed and professional appearance
- + Must be able to pass pre-employment fingerprint, background and drug testing
- + Must possess excellent communication skills to include ability to speak, read and write English

<http://www.rjet.com/emp-pilotcareerguide.html>

Frontier's website, at www.frontierairlines.com, provides a description of its operation, which is provided in relevant part below:

Who are we?

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

Where are we?

Corporate Headquarters

Republic Airways Holdings, Inc.
8909 Purdue Rd, Ste 300
Indianapolis, IN 46268

Local Offices
Frontier Center One
7001 Tower Rd
Denver, CO 80249

General Mitchell International Airport
555 Air Cargo Way
Milwaukee, WI 53207

What do we fly?

We currently operate a fleet of 38 Airbus A319s, nine Airbus A318s, seven Airbus A320s, 15 Embraer E190s, 17 Embraer E170s, six Embraer E145s and six Embraer E135s.

Where do we fly?

We fly to over 70 destinations in the United States, Costa Rica and Mexico.

View Our Route Map. (This link provides a map of the United States, Mexico, and Costa Rica and provides: "Flights are operated by Frontier, Lynx, Republic Airlines and Chautauqua Airlines.")

<http://www.frontierairlines.com/frontier/who-we-are/company-info/fact-sheet.do>.

Prospective employees visiting the Frontier website to look for employment opportunities would click on the link "Work With Us," and then "View all Current Opportunities." The individual would then be redirected to RAH's career page at <http://www.rjet.com/employment.asp> where a list of all openings at all subsidiaries appears.

FAPA contends that the Frontier Pilots work under substantially different terms and conditions of employment than their counterparts at Chautauqua, RA, and Shuttle. This is due to the fact that Frontier Pilots fly the Airbus aircraft which has different operational requirements, and for which Pilots receive higher wages under the current FAPA CBA with Frontier.

D. Seniority Integration Agreements

RAH (on behalf of itself and its wholly-owned subsidiaries, Chautauqua, Shuttle, RA, Midwest, Frontier and Lynx) entered into an agreement with its Pilots' representatives on November 3, 2009 to integrate the Pilots' seniority. An arbitration to integrate the list occurred, with hearings and submission of briefs. A proposed award was issued on November 5, 2010, and a final award was issued February 19, 2011. *See supra* note 2.

E. Marketing

RAH explains that the single carrier that currently is comprised of Chautauqua, Shuttle, and RA will continue to exist in its current form and will be held out to the public and marketed under the brands of the applicable flying partner (Delta, American, US Airways, United, etc.) or the Frontier brand, as applicable. Frontier (and Lynx pending its wind-down) will continue to be held out to the public and marketed under the Frontier brand. RA and Chautauqua will continue to perform services for both the "fixed-fee" and "branded" Frontier operations.

Frontier has its own frequent flyer program, which has been integrated with the former Midwest frequent flyer program. Passengers flying RA, Shuttle, and Chautauqua flights operated on behalf of RAH's mainline partners accrue frequent flyer miles under the specific mainline partner's program in accordance with its rules.

F. Routes and Schedules

Routes and schedules for the "fixed-fee" business are determined and published by the applicable mainline partner and are not combined. Routes and schedules for the "branded" operation are determined by RAH management and are combined under the Frontier brand and operated by Frontier, Lynx, RA, and Chautauqua.

Both RAH's and Frontier's websites have route maps which make clear that "branded" operations are flown by Frontier, Lynx, RA, and Chautauqua. On RAH's website, there is an additional route map for "fixed-fee" operations which provides that those routes are flown by Chautauqua, RA, and Shuttle. See <http://www.rjet.com/destinations.html> and <http://www.frontierairlines.com/frontier/flight-info/route-map.do>.

G. Uniforms

RAH asserts that it has no plans to standardize flight crew uniforms at this time.

H. Equipment

Frontier's fleet of 53 Airbus aircraft are all painted with Frontier's livery. Lynx's fleet, pending its wind-down, is also painted with the Frontier branded livery. RA, Shuttle, and Chautauqua operate a fleet of over 200 Embraer regional jets (E-jets). Six of those E-jets are painted with the RA livery and are used interchangeably in the "fixed-fee" and "branded" business. Outside of those neutral E-jets, RA, Chautauqua, and Shuttle aircraft used in the "fixed-fee" operation have the livery of the applicable mainline partner for which they are being operated. RAH E-jets used in the "branded" operation will have the Frontier livery (except for the neutral aircraft with the RA paint scheme as described above). RAH is in the process of changing the livery on all aircraft previously used in the Midwest branded operation to reflect the Frontier livery, and this process is expected to be complete by early 2011.

At the time of the Frontier/Lynx acquisition, Lynx was operating 11 Q-400 aircraft. Five of those aircraft were leased and have been returned to the lessor. RAH has been looking for a purchaser for the remaining six Q-400s. In the interim, RAH has requested FAA approval to transfer the six Q-400s to the RA certificate. The plan is to have RA operate the six Q-400s, with the aircraft flown by former Lynx Pilots who will be transferred to RA employment.

I. Insignia and Logos

RAH asserts that RA, Shuttle, and Chautauqua will retain their corporate insignia and logos and so will Frontier.

RAH also explains that following the shut-down of Midwest, it began to operate Midwest-branded flights as "RA d/b/a Midwest" using the re-issued Midwest "YX" designator code. Following the decision to discontinue the Midwest brand and utilize only the Frontier brand, RAH is retaining the "YX" designator code but ceasing the use of the "d/b/a Midwest" designation.

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 RAH, but each holds its own FAA operating certificate.⁸ Management between the Carriers has already been integrated. The same Board of Directors and senior management team oversee all of the Carriers. For example, Bryan Bedford is the Chairman and CEO for all of the Carriers. He is also the President of RA, Shuttle, Chautauqua, and Frontier.⁹ Robert H. (Hal) Cooper is the Executive Vice President, CFO, Treasurer and Secretary and Wayne Heller is the Executive Vice President, COO for all the Carriers. Ron Henson is the Vice President, Labor Relations, and Kathy Wooldridge is the Vice President, Human Resources, for all the Carriers. This type of consolidation of senior managers, personnel functions

⁸ Midwest held its own FAA operating certificate until November 2009.

⁹ Pending the wind-down of operations, Cameron Kenyon continues to be the President of Lynx.

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 due in part to substantial overlap among Boards of Directors and senior managers).

There has been significant progress towards an operational merger for the craft or class of Pilots. RAH, on behalf of its subsidiaries Chautauqua, Shuttle, RA, Midwest, Frontier and Lynx, entered into an agreement with its Pilots' representatives on November 3, 2009 to integrate the Pilots' seniority. An arbitration to integrate the list occurred, with hearings and submission of briefs. A proposed award was issued on November 5, 2010, and a final award was issued February 19, 2011. *See supra* note 2. 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 Chautauqua Airlines*, 37 NMB 148, 165 (2010); *US Airways/America West Airlines*, 35 NMB 65, 78 (2008); *American Airlines, Inc./TWA Airlines, LLC*, 29 NMB 201, 212 (2002).

RAH exercises control over the management, labor relations, and human resources functions of all of its subsidiaries including Pilot recruitment. Further, RAH holds out to the public that the Carriers are part of a consolidated entity as shown at its website, <http://www.rjet.com/>. While RAH's business model is one that includes both "fixed-fee" and "branded" operations, its operations are consolidated and "branded" operations are commonly-scheduled under the Frontier brand. For example, the route map available at Frontier and RAH's websites provides that: "Flights are operated by Frontier, Lynx, Republic Airways, or Chautauqua Airlines." In addition, RAH's subsidiaries are presented on a consolidated basis for both financial reporting and operating performance. *See Quarterly Financial Statement*, August 9, 2010; September 2010 Press Release "Republic Airways Reports September 2010 Traffic."

In *Flagship Airlines, Inc.*, 22 NMB 331 (1995), a case with facts very similar to those present here, 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 RAH'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, RA, Shuttle, Frontier, and Lynx employees all apply to jobs through one universal forum, at RJET.com. While prospective employees can go to Frontier's website, if they want to explore employment opportunities they are re-directed to RAH's central job listing page.

At Frontier, the "branded" portion of RAH's operation, aircraft and employees wear the Frontier livery and uniforms. While RAH's "fixed fee" subsidiaries do not fly under a common livery or with common uniforms, this is typical of an operation which provides mainly code-share service. For instance, 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. and 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 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 as a result of common control, common ownership, shared

common officers, centralized management and labor relations; in spite of the fact the carriers had separate FAA operating certificates); *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 RAH exercises sufficient common control over its subsidiaries, Chautauqua, Shuttle, RA, Frontier, and Lynx to form a single transportation system for representation purposes. Following the multi-step transaction that integrated the former Midwest into Frontier and RA, the Carriers all operate with individual operating certificates; however the other factors support a single system finding. Upon the effective date under the arbitrator's award, all Pilots will be working under one seniority list. Management and Boards of Directors are overlapping, and RAH has total operational control over its subsidiaries' operations. Further, Chautauqua, Shuttle, RA, Frontier, and Lynx are held out as a single carrier of affiliates on RAH's website and presented on a consolidated basis for both financial reporting and operational performance.

Based upon the application of the principles cited above to the facts established by the investigation, the Board finds that the Carriers are operating as a single transportation system (Republic Airlines et al./Frontier) for the craft or class of Pilots.

CONCLUSION

The Board finds that Chautauqua, Shuttle, RA, Frontier, and Lynx are operating as a single transportation system (Republic Airlines et al./Frontier) for the craft or class of Pilots for representation purposes under the RLA. As detailed below, the former Midwest Pilots are included in the single transportation system. Accordingly, the IBT's application in File No. CR-6995 is converted to NMB Case No. R-7284. 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.

RAH is directed to provide an **alphabetized list of potential eligible voters** as a **Microsoft Excel file** as described below. The List should include Pilots at Chautauqua Airlines, Shuttle America, Republic Airways, Frontier Airlines, Lynx Aviation, as well as Pilots from the former Midwest Airlines.

RAH **must inform the Investigator of the date of the last day of its last payroll period prior to October 4, 2010** 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 4, 2010**. The list must be **alphabetized** on a system-wide basis. The Carrier must provide a copy of the list to the organization(s). RAH 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**.

By direction of the NATIONAL MEDIATION BOARD.



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