



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the Application of the	39 NMB No. 6
AIR LINE PILOTS ASSOCIATION	CASE NO. R-7305, R-7306 (File No. CR-7000)
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, as amended	FINDINGS UPON INVESTIGATION
involving employees of	November 1, 2011
UNITED AIR LINES AND CONTINENTAL AIRLINES	

This determination addresses the application filed by the Air Line Pilots Association (ALPA). ALPA requests the National Mediation Board (NMB or Board) to investigate whether United Air Lines (United) and Continental Airlines (Continental) (collectively the Carriers) are operating as a single transportation system.

The investigation establishes that United and Continental constitute a single transportation system. The single transportation system also includes Continental Micronesia but not ExpressJet.

PROCEDURAL BACKGROUND

On October 1, 2010, United notified the Board that it “implemented an Agreement and Plan of Merger dated May 2, 2010, resulting in the merger of United Air Lines, Inc. and Continental.” On December 10, 2010, ALPA filed an application alleging a representation dispute involving the crafts or classes of Flight Deck Crewmembers and Flight Instructors at the Carriers. The Carriers submitted a position statement on January 5, 2011.

The crafts or classes are represented by ALPA at United and Continental. At United, the Flight Deck Crew Members are certified under NMB Case No. R-3463 and the Flight Instructors under Case No. R-3806. At Continental, the Pilots are certified under NMB Case No. R-6193 and the Flight Instructors under Case No. R-6717. The Board has recognized that the craft or class of Flight Deck Crew Members includes pilots. *United Air Lines*, 3 NMB 56 (1961).

ALPA asserts that United and Continental constitute a single transportation system for representation purposes under the Railway Labor Act (RLA or Act). The Board assigned ALPA's application NMB File No. CR-7000. The Board assigned Angela I. Heverling to investigate and requested that the Carriers provide information regarding their operations. On January 5, 2011, the Carriers submitted the requested information.

ISSUE

Are United and Continental operating as a single transportation system? If so, what are the representation consequences?

CONTENTIONS

ALPA

ALPA filed its application alleging a representation dispute in response to the Carriers' October 1, 2010 Notice of Merger filed with the NMB. ALPA contends that United and Continental constitute a single transportation system.

ALPA advised the Board that its certification with pre-merger Continental also covers the Pilot and Flight Instructors craft or classes at Continental Express, Inc. (Express). Express was a wholly-owned subsidiary of Continental at the time of certification. *See Re: Independent Ass'n of Continental Pilots/ALPA*, 28 NMB 473 (2001). Express was subsequently sold and renamed ExpressJet. Therefore, ALPA contends that ExpressJet is not part of the single transportation system.

ALPA also contends that Continental Micronesia, Inc. (CMI) should be considered part of the single transportation system. The ALPA/Continental collective bargaining agreement includes flying performed for CMI.

In addition, ALPA contends that employees holding that Flight Instructor position at the merged Carrier should be included in the Flight Deck Crew Member craft or class. ALPA argues that the instructor position at the merged Carrier will include more line pilot functions. According to ALPA, the instructors will be covered by a joint collective bargaining agreement (CBA) and “will be performing regular line functions, and will be part of the integrated seniority list.”

United and Continental

The Carriers state that United and Continental comprise a single transportation system for the crafts or classes of Flight Deck Crew Members and Flight Instructors. The Carriers agree with ALPA that the single transportation system consists of United, Continental, and CMI and that ExpressJet should not be considered part of the single transportation system.

The Carriers do not object to ALPA’s request that the Board combine the crafts or classes of Flight Deck Crew Members and Flight Instructors.

FINDINGS OF LAW

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

I.

United and Continental are common carriers as defined in 45 U.S.C. § 181, First.

II.

ALPA is a labor organization and/or representative as defined in 45 USC § 151, Sixth, and § 152, Ninth.

III.

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

Prior to the merger, United was a wholly-owned subsidiary of UAL Corporation, headquartered in Chicago, Illinois, and operating approximately 3,400 flights a day on United and United Express. Continental was a publically-held company headquartered in Houston, Texas, operating 2,200 daily departures, including regional flights operated on Continental’s behalf. CMI is a subsidiary of Continental that operates from a hub in the U.S. territory of Guam. CMI is managed entirely by Continental; it utilizes Continental name, livery, and logo; and its flights are marketed through the Continental reservations office and website.

ExpressJet, formerly Continental Express, was a wholly-owned subsidiary of Continental. In 2002, Continental sold the subsidiary to a private investment group that renamed it ExpressJet. There is currently no common ownership or management between Continental and ExpressJet. ExpressJet is now a wholly-owned subsidiary of Atlantic Southeast Airlines.

On October 1, 2010, United notified the Board that on that date it “implemented an Agreement and Plan of Merger dated May 2, 2010, resulting in the merger of United Air Lines, Inc. and Continental.” Since October 1, 2010, the Carriers have informed their customers of the merger. The message has been communicated through emails from new Chief Executive Officer Jeffrey A. Smisek to members of both frequent flier programs; through advertisements in national media outlets; through information posted on the Carriers’ websites; through a video by Smisek shown as part of pre-flight announcements on both Carriers; through articles in the Carriers’ in-flight magazines; and through other media outlets.

Pilots and Flight Instructors at United and Continental are represented by ALPA. As of January 5, 2011, there were 6,053 Pilots on active or leave status at United and 4,622 Pilots on active or leave status at Continental. As of January 5, 2011, there were 120 Flight Instructors on active or leave status at United and 86 Flight Instructors on active or leave status at Continental.

Common Corporate Ownership

On May 2, 2010, UAL and Continental entered into an Agreement and Plan of Merger (Merger Agreement). Under the Merger Agreement, UAL would acquire all of the outstanding stock of Continental. The Merger Agreement became effective on October 1, 2010. UAL has been renamed United Continental Holdings, Inc. (UCH), and United and Continental are currently wholly-owned subsidiaries of UCH. UCH has a single board of directors, elected by former UAL and Continental shareholders. Glenn Tilton, former Chief Executive Officer at United, now serves as non-executive chairman of the UCH Board of Directors. Jeffrey A. Smisek, former Chief Executive Officer of Continental, now serves as President and Chief Executive Officer of UCH, United, and Continental.

Management and Labor Relations

According to the declaration of P. Douglas McKeen, Senior Vice President-Labor Relations for United and Continental, on October 1, 2010, the Boards of UCH, United, and Continental approved the appointment of approximately 60 officers for the combined companies. The executive offices of the Carriers have also been combined and all senior executives are relocating to the existing United offices in Chicago. All of the managing director and director positions for the combined company were on schedule to be filled by the end of January 2011. The departments were scheduled to fill all additional management positions in the first quarter of 2011.

United and Continental have appointed a single group of officers responsible for labor relations. Michael Bonds, formerly the chief labor and human resources officer for Continental, is now Executive Vice President-Human Resources and Labor Relations for both Carriers. McKeen was formerly Senior Vice President-Labor Relations at United and is now responsible for labor relations at both Carriers. Daniel Casey, formerly Staff Vice President-Labor Relations for Continental, is now Vice President-Labor Relations for both Carriers.

At the time of the Merger Agreement, almost all of the CBAs at both Carriers had become amendable and both Carriers were involved in Section 6 negotiations with the unions. The Carriers offered to enter into joint CBAs with any union. Only ALPA accepted the offer. In July of 2010, the Carriers entered into a Transition and Process Agreement with ALPA. Combined bargaining teams began full-time negotiations for a joint CBA in August of 2010. The Carriers and ALPA jointly applied for mediation with the Board on December 17, 2010.

Seniority Integration Process

With respect to the seniority integration process, ALPA states that the United and Continental Master Executive councils have entered into a Protocol Agreement, pursuant to ALPA's Merger Policy. The agreement requires the selection of a mediator and three others to serve on an arbitration board within thirty days after a joint CBA tentative agreement is reached. The arbitration board shall decide the dispute if no integrated seniority list is agreed upon within 140 days after the date of the tentative agreement.

Personnel Policies and Employee Benefits

The personnel functions of United and Continental have been combined under the leadership of Michael Bonds. R. Douglas Rose, who was formerly Vice President-Total Rewards at United, is now Vice President-Human Resources for the combined Carrier. He has responsibility for strategic planning of human resources, compensation, and benefits for all 80,000 employees. Donna Towle, who was formerly Director of Human Resources for Continental, is Vice President-Employee Relations and manages a large team of employee relations representatives for the Carriers.

On October 1, 2010, the combined Carriers issued uniform personnel policies in a number of areas. These included the "Working Together Guidelines" the primary personnel policy governing all employees. The guidelines include a policy known as the "Working Together Expectations," which is a set of employee personnel guidelines that replaced the previous guidelines at United and Continental. On October 1, 2010, the combined Carriers also issued a common Equal Employment Opportunity policy, a common dress code for non-uniformed employees, and travel policies that provided reciprocal benefits for employees of both Carriers. According to McKeen, the combined Carriers have adopted a new compensation structure for management employees, replacing the compensation structures at United and Continental.

Through March 2011, the combined Carriers issued additional personnel policies, including a common perfect attendance reward policy, common incentive programs, common profit sharing program, common smoke-free workplace policy, common holiday schedules, a common policy on office closings under adverse conditions, and a common vacation policy. On March 1, 2011, the Carriers will implement a common policy on seniority and service credit and a common performance management statement. According to McKeen, the combined Carriers will continue to harmonize remaining personnel policies and procedures through the end of 2011. The Carriers also plan to announce a common benefits package for all non-union employees of the company that will be implemented on January 1, 2012.

Before the end of 2011, the combined Carriers plan to harmonize all departments. According to McKeen, “[e]ach functional department within the combined company has developed plans for a new, combined organizational structure and the Carriers are in the process of developing migration plans that will guide the transition from the existing separate organizations to a single, combined organization over the next year.”

FAA Operating Certificate

McKeen states that in October of 2010 the Carriers obtained approval from the FAA for a transition plan for moving to a single operating certificate. The Carriers expect that the FAA will issue the single operating certificate in the last quarter of 2011 or the first quarter of 2012. The FAA has already granted Continental’s request for a single operating certificate to combine it and CMI.

Routes and Schedules

For two years prior to the merger, United and Continental had maintained a code-sharing and alliance agreement under which a large number of flights were already operated under both airlines’ codes. According to McKeen, United and Continental had highly complementary route structures. They have since implemented changes to align schedules in the twelve markets where they had overlapping flights and have placed both Carriers’ codes on a number of additional flights. Where flights carry both codes, they can be purchased through either Carrier’s website or reservations center. Regarding further integration of flight routes and schedules, McKeen reported that during 2011, the Carriers began integrating routes and schedules by redeploying aircraft and crews and this will continue through 2012.

Frequent Flyer Programs, Clubs, and Credit Cards

In October of 2010, the Carriers integrated frequent flyer and airport club benefits so that members at both Carriers receive benefits and club access while flying at either Carrier. The Carriers will not merge the United MileagePlus and Continental OnePass programs into a single program until the end of 2011 due to the time required to merge computer systems. In October of 2010, both Carriers did, however, begin counting flights on either Carrier toward elite status under both programs. Elite members of each program have reciprocal access to complimentary upgrades and preferred economy seating on United and Continental flights. The Carriers' airport lounges, the Red Carpet Club and the Presidents' Club, are both open to members of either club. On October 1, 2010, the Red Carpet Clubs adopted the Presidents' Club policy of offering free wireless internet access and complimentary alcoholic beverages.

Customer Service Policies and Fees

In the Carriers' two largest hubs, Chicago O'Hare Airport and Houston's Bush Airport, both Carriers have relocated operations to the same terminal. The Carriers reported that they expected to complete hub consolidation for all but one hub in the first quarter of 2011. Subject to the limitations of current lease agreements and the approval of local airport authorities, the Carriers began consolidating ticket counters and gates at other airports. The Carriers are also in the process of consolidating other airport real estate, such as offices, break rooms, and storage rooms.

Reservations

On "Customer Day One" in the spring of 2011, the Carriers began implementing changes to the existing reservations systems that will permit both Carriers to handle airport check-in at kiosks for customers of either Carrier. Passengers can also shop for flights on either Carrier's website.

Corporate Name, Livery, and Logos

In the Merger Agreement, the Carriers agreed that the combined Carrier would be known as United, but that it would adopt a livery and marketing identity consisting of the United name and the Continental colors and logo. Aircraft will be repainted with the new livery as they are taken out of service for regularly-scheduled maintenance. The first aircraft painted with the new

livery, a Continental B-737, began operating before the formal closing of the Merger Agreement. Additional aircraft with the new livery are entering service on a regular basis. Until the combined Carrier receives a single operating certificate, the newly repainted Continental aircraft must carry the statement "Operated by Continental Airlines." Aircraft operated by the Carrier's regional partners will be repainted in the new livery with the name United Express with repainting of those aircraft on a schedule similar to the mainline aircraft.

More widespread use of the new United marketing identity began on Customer Day One with airport signage introduced in Chicago.

Common Uniforms and Insignia

The Carriers have begun to adopt designs and select manufacturers for common uniforms for all uniformed employees. The Carriers do not expect to implement common uniforms for all of these employees until 2012. Until that time, the Carriers will issue common accessories, such as branding pins, to give the appearance of common uniforms.

Representation of Pilots and Flight Instructors

As noted above, ALPA is the certified representative for Flight Deck Crew Members (including Pilots) and Flight Instructors at the Carriers. The current positions in the craft or class of Flight Deck Crew Members at United include captains and first officers. In 1989, United entered into an agreement with ALPA which outlined the qualifications, duties, and compensation for Pilot Instructors and provided that they "will be pilots represented by the Association with line seniority numbers." According to ALPA, the employees in the Pilot Instructor position have since been treated as being commonly represented by ALPA as a "constituent part" of the Pilot craft or class.

ALPA's certification at Continental covers separate crafts or classes of Pilots and Flight Instructors. *IACP/ALPA*, 28 NMB 473 (2001). To qualify for the position of Flight Instructor at Continental, an employee must be a pilot on the seniority list and have a specified amount of flight time. According to McKeen, Flight Instructors at Continental are scheduled for line flying two or three days a month. Although they must be on the pilot seniority list, they may continue in the position of instructor even if they become unable to fly because of age or medical condition.

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.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. V. Nat'l Mediation Brd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

II.

Single Transportation System

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 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. *Delta Air Lines/Northwest Airlines*, 36 NMB 36 (2009); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron and Eastern Ry. Co., Inc.*, 31 NMB 450 (2004); *Portland & Western R. R., Inc.*, 31 NMB 71 (2003).

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). In *Delta Air Lines/Northwest Airlines*, above, the Board found a single transportation system where the FAA had accepted the carriers' plan for transition to a single operating certificate; there was a single board of directors; the carriers and the union had reached an agreement on seniority integration; and management and human resources positions had been integrated.

In the instant case, the Carriers are wholly-owned subsidiaries of UCH. UCH has a single board of directors and a common senior management group in place. There is a single group of officers responsible for labor relations at the Carriers. Personnel policies and practices are in the process of being integrated. The Carriers have obtained approval from the FAA for a transition plan for moving toward a single operating certificate.

The Carriers have been aligning schedules in the markets where there are overlapping flights. The Carriers have maintained a code-sharing and alliance agreement for years and have plans for further integration of flight routes and schedules through 2012. The Carriers have begun the process of merging their frequent flyer programs and members of both Carriers' programs are now able to receive benefits while flying at either Carrier. The Carriers have relocated operations to the same terminal in the two largest hubs. The Carriers have adopted a new logo and the first aircraft with the new livery has

begun operating. The Carriers have begun the process of transitioning to common uniforms.

Additionally, in the crafts or classes at issue in this representation dispute, the Carriers and ALPA have entered into a Transition and Process Agreement and began full-time negotiations for a joint CBA. The United and Continental ALPA Master Executive Councils have also reached an agreement regarding seniority integrations.

The Board has previously found these Carriers to be a single transportation system for other crafts and classes. *See, e.g., United Air Lines/Continental Airlines*, 38 NMB 185 (2011) (Fleet Service Employees); *United Air Lines/Continental Airlines*, 38 NMB 319 (2011) (Engineers and Related Employees).

Based upon the application of the principles to the facts established by the investigation, the Board finds that United and Continental operate as a single transportation system for representation purposes.

The evidence also establishes that CMI is part of this single transportation system. This has been determined in prior single carrier determinations for this Carrier. *See, e.g., United Air Lines/Continental Airlines*, 38 NMB 185. In the Pilots craft or class, the Board has previously treated CMI and Continental as a single carrier. In 1993, the Board certified the Independent Association of Continental Pilots (IACP) as the representative of Pilots at Continental and Continental Express. *Continental/ Continental Express*, 20 NMB 570 (1993). The Board identified "Air Micronesia" as a subsidiary of Continental in its determination that Continental and Continental Express were a single transportation system. *Continental/ Continental Express*, 20 NMB 326 (1993). Air Micronesia was renamed Continental Micronesia in 1993 after being acquired by Continental.

Because there is no longer common ownership or management between Continental and ExpressJet, ExpressJet is not part of the single transportation system.

III.

Craft or Class Determination

ALPA's application requested that Board investigate the representation

status of the “Flight Deck Crewmembers” and the “Flight Instructors” at United and Continental.

The craft or class of Flight Deck Crew Members includes pilots, copilots, and flight engineers, where those job functions exist. *United Air Lines*, 3 NMB 56 (1961); *ABX Air*, 22 NMB 131 (1995). Since 1965, the Board has held that Flight Instructors constitute a separate craft or class. *United Air Lines*, 4 NMB 30. The Board has previously refused to accrete Continental “Instructor Pilots” into the pilot craft or class. *Continental Airlines*, 26 NMB 143.

ALPA argues that pilot instructors should be included in the Flight Deck Crew Member craft or class at the merged Carrier. Since 1989, employees in the flight instructor position at United have been treated by the participants as a “constituent part of the United pilot group.” At Continental, the CBA between the Carrier and ALPA covers both pilots and instructors. ALPA argues that instructors should be included in the Flight Deck Crew Member craft or class because in the future the instructor position at the merged Carrier will be more integrated with the pilot position. According to ALPA:

Going forward with the merged operation, there is little question that the flight Instructor position at the new United is intended to be combined with line pilot functions to a greater degree than at present, and the performance of regular, line functions will become an express contractual condition of holding the instructor position, whether termed Pilot Instructor or Flight Instructor. Both ALPA and management [joint collective bargaining agreement] proposals in this area, although differing in details, envision the Pilot/Flight Instructor position involving a greater percentage of regular line pilot flying duties than exist today and there is no dispute that, under the new contract, instructors should have regular flying duties.

The Carriers do not object to including instructors in the Flight Deck Crewmember craft or class.

When a representation dispute is brought before the Board, it must determine the appropriate craft or class regardless of any voluntary recognition by the carrier or agreement between the participants. *See, e.g., Northern Ind. Commuter Transp. Dist.*, 27 NMB 512, 518 (2000). The Board follows traditional craft or class definitions rather than the definition accepted by the

participants. Flight Deck Crew Members and Instructors have historically been separate crafts or classes.

The Board has determined that Instructors do not share a community of interest with Flight Deck Crew Members or Pilots. *See, e.g., Offshore Logistics*, 11 NMB 144 (1984); *Continental Airlines*, 26 NMB 143 (1999). In *Continental Airlines*, the Board refused to accrete instructors into the Pilots craft or class despite the fact that most of the instructors came from the Pilots craft or class and some returned to work as line pilots. *Id.* at 144. In recent years, the Board has recognized that other types of instructors in the airline industry belong in separate crafts or classes than the employees who they instruct. *See US Airways*, 30 NMB 251 (2002) (finding that Inflight Training Specialists were not part of the Office Clerical craft or class and constituted their own craft or class); *United Air Lines*, 26 NMB 169 (1999) (certifying a craft or class of Maintenance Instructors).

ALPA has not provided any evidence that current circumstances warrant deviating from the traditionally recognized crafts or classes in the airline industry. Although Flight Instructors at Continental are scheduled some line flying, this is not a job requirement as evidenced by the fact that they are able to maintain the position even if unable to fly. Their primary responsibility at United and Continental is to train pilots. ALPA claims that future contracts with the merged Carrier will change the nature of the instructor position; however, in representation disputes, the RLA deals with the present status and interests of employees involved and not with potential future status and interests of employees. *Chicago & North Western Railway Co.*, 4 NMB 240, 249 (1965). Instructors do not currently share a community of interest with Flight Deck Crew Members and, therefore, are not properly part of that craft or class.

CONCLUSION

The Board finds that United and Continental (including CMI) are operating as a single transportation system for representation purposes under the RLA. Accordingly, ALPA's application in File No. CR-7000 is converted to NMB Case No. R-7305 (Flight Deck Crew Members) and R-7306 (Instructors). Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of these crafts or classes. The Incumbent and Interveners are reminded that the showing of interest on the single transportation system is governed by Manual Sections 19.601, 19.602, and 19.603.

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:
Douglas McKeen
Daniel P. Casey
Frederick C. Abbott, Sr.
Tom A. Jerman
Robert Siegel
Marcus C. Migliore