



NATIONAL MEDIATION BOARD

WASHINGTON, DC 20572

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In the Matter of the
Application of the

PROFESSIONAL AIRCRAFT
FLIGHT CONTROL ASSOCIATION
AND TRANSPORT WORKERS
UNION OF AMERICA, AFL-CIO

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

involving employees of

UNITED AIRLINES AND
CONTINENTAL AIRLINES

41 NMB No. 53

CASE NO. R-7408
(File No. CR-7129)

FINDINGS UPON
INVESTIGATION

September 10, 2014

This determination addresses the joint application filed pursuant to the Railway Labor Act (RLA)¹ by the Professional Aircraft Flight Control Association (PAFCA) and the Transport Workers Union of America, AFL-CIO (TWU) (collectively the Organizations). The Organizations request the National Mediation Board (NMB or Board) to investigate whether United Airlines, Inc. (United) and Continental Airlines, Inc. (Continental) (collectively the Carriers) are operating as a single transportation system for the craft or class of Flight Dispatchers.

¹ 45 U.S.C. § 151, *et seq.*

The investigation establishes that United and Continental constitute a single transportation system known as United for the craft or class of Flight Dispatchers.

PROCEDURAL BACKGROUND

On October 1, 2010, pre-merger 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 July 18, 2014, PAFCA and TWU jointly filed an application alleging a representation dispute involving the craft or class of Flight Dispatchers. TWU represents these employees at pre-merger Continental Airlines pursuant to certification in NMB Case No. R-4284. Flight Dispatchers at pre-merger United are represented by PAFCA pursuant to certification under NMB Case No. R-6712.

The Board assigned the Organizations’ application NMB File No. CR-7129. The Board assigned Cristina Bonaca to investigate and requested that the Carriers provide information regarding their operations. The Carriers submitted a position statement on August 4, 2014, supported by a declaration from P. Douglas McKeen, Senior Vice President – Labor Relations for United. TWU and PAFCA submitted a joint statement on August 21, 2014.

ISSUES

Are United and Continental operating as a single transportation system for the craft or class of Flight Dispatchers? If so, what are the representation consequences?

CONTENTIONS

The Carriers

The Carriers state that United and Continental comprise a single transportation system for the craft or class of Flight Dispatchers. According to the Carriers, the Board should find a single transportation system for the reasons that it did so in other crafts and classes at the combined Carrier. See *United Air Lines/Continental Airlines*, 40 NMB 93 (2013) (Flight Simulator Technicians); *United Air Lines/Continental Airlines*, 38 NMB 124 (2011) (Flight Attendants); *United Air Lines/Continental Airlines*, 38 NMB 161 (2011) (Stock Clerks); *United Air Lines/Continental Airlines*, 38 NMB 185 (2011) (Fleet Service). Since those earlier decisions, the Carriers have made even more progress towards forming a single system and have nearly completed their goal

of creating a single airline operating under the United name.

PAFCA and TWU

Joint Applicants PAFCA and TWU are in agreement with the Carriers that the airline that resulted from the merger of United and Continental constitutes a single transportation system for the craft or class of Flight Dispatchers.

FINDINGS OF LAW

Determination of the issues in this case is governed by the Railway Labor 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.

PAFCA and TWU are labor organizations and/or representatives as defined in 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

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

Background

Prior to the October 1, 2010 merger, pre-merger United was a wholly-owned subsidiary of UAL Corporation (UAL), 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.

On October 1, 2010, pre-merger United notified the Board that it had "implemented an Agreement and Plan of Merger dated May 2, 2010, resulting in the merger of United Air Lines, Inc. and Continental." The Carriers obtained a single operating certificate from the Federal Aviation Administration (FAA) in November 2011.

As of March 31, 2013, United is now the sole operating subsidiary of United Continental Holdings, Inc. (UCH). UCH and United report financial results under federal securities laws on a consolidated basis where permitted. United, headquartered in Chicago, Illinois, currently operates over 5,000 flights a day throughout the Americas, Europe, and Asia. United has hubs and key airports in Boston, Chicago-O'Hare, Cleveland, Denver, Guam, Houston, Los Angeles, Newark, San Francisco, and Washington-Dulles.

At pre-merger United, the Flight Dispatchers are represented by PAFCA pursuant to a certification issued by the NMB on January 24, 2000 in Case No. R-6712. *See United Airlines, Inc.*, 27 NMB 190 (2000). The terms and conditions of employment for pre-merger United's Flight Dispatchers are set forth in a joint collective bargaining agreement (JCBA) between United and PAFCA/TWU Local 542, that was ratified on June 16, 2014, and becomes amendable on June 30, 2018. At Continental, the Flight Dispatchers are represented by TWU pursuant to a certification issued by the NMB in 1972 in Case No. R-4284. *See Continental Air Lines, Inc.*, 5 NMB 152 (1972). The terms and conditions of employment for Continental's Flight Dispatchers are also set forth in the JCBA.

As of the July 15, 2014 cut-off date, there were 372 individuals on the combined Flight Dispatcher seniority list.²

² According to the Carriers, twenty-two of those individuals are not covered by the application because they are management employees who retain Flight Dispatcher seniority.

Common Corporate Ownership/Management and Labor Relations

On May 2, 2010, pre-merger United and Continental entered into an Agreement and Plan of Merger (Merger Agreement). Under the Merger Agreement, pre-merger United would acquire all of the outstanding stock of Continental. The Merger Agreement became effective on October 1, 2010, and on the closing of that transaction, UAL was renamed UCH, and pre-merger United and Continental became wholly-owned subsidiaries of UCH. All of the outstanding stock of UAL and Continental was converted into stock in UCH, which is traded under the symbol UAL.

According to the declaration of P. Douglas McKeen, UCH has a single Board of Directors, which consists of a combination of former UAL and Continental Directors and two labor representatives appointed pursuant to agreements between pre-merger United and the Air Line Pilots Association, and pre-merger United and the International Association of Machinists and Aerospace Workers. Jeffrey A. Smisek, former Chief Executive Officer of Continental, now serves as Chairman of the Board, President and Chief Executive Officer of UCH and United.

On October 1, 2010, the Boards of UCH, pre-merger United, and Continental approved the appointment of approximately 60 officers for the combined companies. Officers have continued to be appointed on a combined basis since October 1, 2010, and since March 31, 2013, there is now a single set of officers representing United. The executive offices of the Carriers have been combined and senior management is now located in United's corporate headquarters in Chicago, Illinois. All of the managing director and director positions for the combined company have been filled.

United and Continental appointed a single group of officers responsible for labor relations at the pre-merger Carriers, and subsequently, United. Michael Bonds, formerly the chief labor and human resources officer for Continental, is now Executive Vice President-Human Resources and Labor Relations for United. McKeen was formerly Senior Vice President-Labor Relations at pre-merger United and is now responsible for labor relations at United. Jeffrey Wall is now Vice President-Labor Relations at the merged United. Justin Doane, Senior Specialist-Labor Arbitration, has responsibility for labor relations with United's Flight Dispatchers group.

Labor Protection Provisions and Interim Agreements

According to McKeen, at the time of the Merger Agreement, all of the affected employees were covered by labor protective provisions. The employees were entitled, under the McCaskill-Bond Amendment, to the benefits of Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions formerly issued by the Civil Aeronautics Board.

As of United's August 2014 filing, United has reached JCBA's covering its Pilots, Passenger Service Employees, Fleet Service Employees, Storekeepers, and Flight Dispatchers crafts or classes.

The Flight Dispatchers' integrated seniority list was presented to United and went into effect on June 16, 2014.

Personnel Policies and Employee Benefits

The personnel functions of United and Continental have been combined under the leadership of Michael Bonds. Mike Ellis serves as Vice President – Human Resources for United, with responsibility for strategic planning of human resources, compensation, and benefits for approximately 87,000 employees. Donna Towle, who was formerly Director of Human Resources for Continental, is Vice President-Employee Relations, with responsibility for management of a large team of employee relations representatives serving the combined company.

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.

United has now issued all of its personnel policies governing the combined entity. Some of the unified personnel policies include a perfect attendance reward program; an on-time bonus program; a profit-sharing program; a solicitation policy; a smoke-free workplace policy; holiday schedules for management and unrepresented employees; a policy on adverse conditions office closings; a vacation policy for management and unrepresented

employees; a policy on seniority and service credit; a performance management statement; an anti-harassment and discrimination policy; certain benefit packages for all unrepresented employees; and a number of other common policies.

The combined Carriers have adopted a new compensation structure for management employees, replacing the compensation structures at pre-merger United and Continental.

Common employee communications have been implemented for the combined Carriers, including “Flying Together,” a common homepage for all employees; “United Daily,” a daily newspaper that serves all employees of the combined Carriers; “United World,” a monthly newspaper-style communication distributed to the combined employee group; and “United Connections,” a quarterly magazine-style publication.

Routes and Schedules/FAA Operating Certificate

The Carriers obtained a single operating certificate from the FAA in November 2011, which includes Continental Micronesia (CMI).

All flights are now marketed under the “UA” code. United has integrated routes and schedules by redeploying aircraft from pre-merger United routes to pre-merger Continental routes. Significant aircraft redeployments began in the spring of 2012 following the move to a single passenger service system.

Frequent Flyer Programs and Clubs

In October of 2010, the Carriers integrated frequent flyer and airport club benefits so that members of both Carriers’ programs receive benefits and club access while flying on either Carrier. The Carriers have since completely merged the United MileagePlus and Continental OnePass programs into a single frequent flyer program. The Carriers’ airport lounges, the Red Carpet Club and the Presidents’ Club, have been consolidated into UnitedClub. United now publishes a single inflight magazine called Hemispheres.

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 livery and a marketing identity consisting of the United name and the Continental colors and logo. The use of the new livery and logo continues to occur, and is nearing

completion. Almost every aircraft in the mainline fleet has been repainted in the new livery, and the remaining aircraft are scheduled to be repainted by the end of 2014. Additional aircraft with the new livery are entering service on a regular basis. Most of the aircraft operated by United's regional partners also have been repainted in new livery with the marketing name United Express.

United has consolidated internet access (at www.united.com) and a person seeking to access the former www.continental.com is now automatically redirected to www.united.com. Customers now check in at the airport and print boarding passes for flights on United using new United-branded self-service kiosks. Airport check-in and boarding area signage reflects the new United's branding, and this re-branding has now been completed on a worldwide basis.

Reservations/Marketing

Since March 3, 2012, the Carriers have used a combined passenger service and reservations system and all flights are marketed under the same "UA" code. United now advertises only under the United name and now utilizes a single channel in social media by connecting followers through the Twitter handle @United and through a United Facebook page. "United" is marketed as a single airline, with over 5,000 daily flights, and access to more than 350 destinations in 60 countries.

Integration of Ground Operations

United has co-located its ticket counters and gates at 147 stations worldwide, and all hubs, except for one remaining station expected to be completed by the end of 2014. United has almost completed the process of consolidating other airport real estate, and has aligned check-in and boarding processes across its system. In addition, the merged United now has a single set of minimum check-in and boarding times; a single set of boarding procedures for both domestic and international flights; and a single set of key customer policies and fees.

Common Uniforms and Insignia

In June 2013, all employees in United's uniformed work groups began wearing common uniforms designed for the new Carrier.

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 Bd.*, 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

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 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).

Pre-merger United and Continental are now a single legal entity known as United. Since the merger was announced, the Carriers have communicated to the public through many forms of media their intention to substantially integrate operations.

United is wholly-owned by UCH, controlled by a single board of directors, and has integrated management at all levels. United now has a single group of officers responsible for labor relations. Personnel functions have been consolidated and the Carriers have fully implemented common personnel policies. In addition, United has engaged in joint collective bargaining negotiations and achieved JCBA's with its Pilots, Passenger Service Employees, Fleet Service Employees, Storekeepers, and Flight Dispatchers crafts or classes.

The Carriers have received a single operating certificate from the FAA, and their routes and schedules are nearly fully integrated. The Carriers have repainted most of the aircraft under the new livery, and have had common uniforms for employees since June 2013. Further, the Carriers have implemented common airport signage and consolidated customer service operations under the United name, including marketing all flights under the "UA" code. The Carriers have additionally merged their frequent flyer programs and airport lounges.

The Board has found a single transportation system at United for a number of other crafts or classes, and as of the date of this decision, there has

been even more progress towards complete integration of the Carriers. See, e.g., *United Air Lines/Continental Airlines*, 40 NMB 93 (2013) (Flight Simulator Technicians); *United Air Lines/Continental Airlines*, 39 NMB 491 (2012) (Fleet Technical Instructors); *United Air Lines/Continental Airlines*, 39 NMB 229 (2011) (Passenger Service Employees); *United Air Lines/Continental Airlines*, 38 NMB 161 (2011) (Stock Clerks).

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 the craft or class of Flight Dispatchers.

CONCLUSION

The Board finds that United and Continental are operating as a single transportation system (United) for representation purposes under the RLA. Accordingly, the Organizations' joint application in File No. CR-7129 is converted to NMB Case No. R-7408.

Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of this craft or class. Any Intervenor has thirty (30) days from the date of this determination to file an application supported by the requisite showing of interest of at least fifty (50) percent of the employees in the craft or class. The participants are reminded that under Manual Section 19.7, existing certifications remain in effect until the Board issues a new certification or dismissal.

By direction of the NATIONAL MEDIATION BOARD.



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