



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the  
  
AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL

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

involving employees of  
  
EXPRESSJET AIRLINES, INC.

44 NMB No. 36

CASE NO. R-7500  
(File No. CR-7173)

FINDINGS UPON  
INVESTIGATION-  
DISMISSAL

June 27, 2017

This determination addresses the application of the Air Line Pilots Association, International (ALPA or Organization) alleging a representation dispute pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among Ground Instructors at ExpressJet Airlines, Inc. (ExpressJet or Carrier). ALPA is the certified representative of the Flight Instructors craft or class at ExpressJet (NMB Case No. R-6717). *Independent Association of Continental Pilots/Air Line Pilots Association*, 28 NMB 473 (2001) (transferring the certification of Continental's Flight Instructors to ALPA while ExpressJet was a part of Continental).<sup>2</sup> ALPA asserts that the Ground Instructors are properly part of a combined Instructor craft or class with Flight Instructors and requests that the Board accrete the Ground Instructors into the Flight Instructors craft or class. In the alternative, ALPA requests a representation election for the Ground Instructors.

<sup>1</sup> 45 U.S.C. § 151, *et seq.*

<sup>2</sup> During Continental Airlines' merger with United Air Lines, ALPA and the merging carriers agreed that ExpressJet would not be a part of the post-merger airline. See *United Air Lines/Continental Airlines*, 39 NMB 6 (2011).

For the reasons set forth below, the National Mediation Board (Board or NMB) concludes that the Ground Instructors are already covered by ALPA's certification. Therefore, the Board dismisses the application.

### PROCEDURAL BACKGROUND

On May 19, 2017, ALPA filed an application alleging a representation dispute involving the Ground Instructors at ExpressJet. The Organization is requesting that the Board accrete these employees into the Flight Instructors craft or class and create a combined Instructors craft or class. ALPA supports this request with authorization cards. In the alternative, ALPA requests a representation election among the employees at issue.

The application was given NMB File No. CR-7173 and Angela I. Heverling was assigned as the Investigator. The Board requested that the Carrier provide it with a list and signature samples for the Ground Instructors, which it provided, along with a position statement on June 1, 2017.

### ISSUE

Are ExpressJet's Ground Instructors and Flight Instructors part of a combined craft or class?

### CONTENTIONS

ExpressJet opposes ALPA's effort to accrete the Ground Instructors into one craft or class with the Flight Instructors. According to the Carrier, the two groups of employees do not share a community of interest.

ALPA contends that circumstances have changed since the Board determined that the two groups of employees did not share a community of interest in an earlier decision when ExpressJet was part of Continental Airlines.

### FINDINGS OF LAW

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

I.

ExpressJet is a common carrier as defined in 45 U.S.C. § 181.

II.

ALPA is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

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

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

ExpressJet was formerly part of a single system with Continental Airlines. The Board determined that Ground Instructors at the combined system did not share a community of interest with Flight Instructors in *Continental Airlines, Inc./Continental Express, Inc.*, 27 NMB 99 (1999). Because ExpressJet is no longer part of the system following the Continental/United merger, this is the first time that the Board is addressing the status of the approximately 15 Ground Instructors at ExpressJet.

*Ground Instructors*

According to James Barbour, Director of Flight Training for ExpressJet, Ground Instructors provide training that is “academic in nature and focused on general information regarding flight procedures and systems.” Barbour states that Ground Instructors “provide systems training, procedures training, and checklist and memory item training during the ground portion of [indoctrination] training, initial training, recurrent training, upgrade training, and requalification training.” Ground Instructors teach up to 40 students at a

time in a classroom environment. They can also instruct one or two pilots in flight training devices (FTDs), which are similar to full flight simulators but are stationary. The training that is done in FTDs is on flight procedures and aircraft programming. According to Barbour, Ground Instructors do not train pilots on "full motion simulators." In the Ground Instructor Work Guidelines (Guidelines), a Ground Instructor is defined as "[a]n off-line instructor who teaches Systems and Procedures in classrooms and PDFs, or Basic [indoctrination] classes."

According to the Guidelines, Ground Instructors report directly to the Manager of Flight Standards, after first attempting to address concerns with the Lead Instructor. According to Barbour, however, Ground Instructors report to the Manager of Ground Training, who reports to Barbour.

Ground Instructors participate in flying the line. According to the Guidelines, the Carrier "will schedule Ground Instructors for no less than 2 days of line flying every other month." The Carrier is relieved of the obligation if the Ground Instructor has picked up his or her required amount of line flying. Ground Instructor compensation is set in relation to the Carrier's pilot compensations. For example, the Ground Instructor base rate is defined as "50-seat Jet First Officer rate based on years of service, plus a vacation override." Ground Instructors are eligible for profit sharing.

The Ground Instructor Job Template provides the qualifications for Ground Instructors, including the qualification that Ground Instructors be a "Qualified ERJ crew member" and have "ERJ-145 Type rating." An ERJ is the 50-person jet flown by ExpressJet. Other qualifications include satisfactory performance in current position and ability to communicate, with strong presentation and grammar skills. A preferred qualification is "One year experience in ExpressJet line operations on the ERJ." All current Ground Instructors are line qualified.

### *Flight Instructors*

According to Barbour, ExpressJet employs three classifications of Flight Instructors. These are flight simulator instructors, check airmen, and aircrew program designees (APDs).

Flight simulator instructors provide training on aircraft maneuvers, flying skills, and techniques to individual pilots; train pilots on aircraft procedures and systems; and perform most training in full flight simulators and FTDs.

Check airmen perform flight checks on individual pilots using full flight simulators and provide practical training in full flight simulators and FTDs. They must be approved by the Federal Aviation Administration (FAA).

APDs are designated by the FAA and are authorized to perform flight checks on individual pilots on behalf of the Carrier and the FAA. These checks are primarily performed on full flight simulators. APDs also provide practical training in full flight simulators and FTDs regarding cockpit procedures, aircraft maneuvers, flying skills, and techniques. APDs must be qualified check airmen.

Flight Instructors are covered by a collective bargaining agreement (CBA) between ALPA and the Carrier. As described in the CBA, Flight Instructor compensation is also set in relation to pilot pay with base hourly pay "in accordance with the rates for Captain, EMB-145, at the applicable longevity scale, as set forth in Part I, Section 3" with additional hourly overrides. Flight Instructors receive the same on-time bonuses and profit sharing as pilots.

The Flight Instructor Job description describes the position as "an Airman designated by a 14 CFR Part 121 certificate holder, who has the appropriate training, experience, and demonstrated ability to instruct other airmen in a curriculum segment of that certificate holder's training program." Job requirements include the requirement to "[m]aintain current, qualified status as a Captain on the EMB-145 or participate in a line observation program." Another requirement is one year of experience as a "Captain on the EMB145 at ExpressJet Airlines." Other qualifications include communication and leadership skills.

According to Barbour, Flight Instructors report to the ERJ Program Manager, who reports to Barbour.

Although both groups of employees are part of the Training Department, the Carrier maintains separate seniority lists for Flight Instructors and Ground Instructors. According to the CBA and the Guidelines, a pilot who transfers to training duty as a Flight Instructor or any Ground Instructor with a "line seniority number" will continue to accrue seniority and longevity as a line pilot for purposes of pay and other benefits.

DISCUSSION*Craft or Class Determination*

In determining the proper craft or class for a group of employees, the Board considers a number of factors, including functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *Southwest Airlines*, 42 NMB 110 (2015); *Louisville & Indiana RR*, 41 NMB 82 (2014); *Indiana Southern RR*, 37 NMB 226 (2010); *Florida Northern Railroad*, 34 NMB 142 (2007). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988).

The Board has long recognized Flight Instructors as a separate craft or class from Pilots. See *e.g. United Air Lines*, 4 NMB 30 (1965); *Continental Airlines*, 26 NMB 143 (1999). The Board has at times addressed which factors should be considered in determining the appropriate craft or class for employees engaged in training operations, i.e., whether all flight instructors should be in one craft or class or are appropriately separated. In *United Airlines*, 9 NMB 266, 282-83 (1982), the Board described several of these factors as the following: “the actual duties and responsibilities of the employees involved in training, the nature and setup of the training operations, the environment in which the employees work, qualifications for employment, conditions required to retain the position, and the interaction between the individuals involved in the training.” See also *U.S. Air*, 10 NMB 391, 395 (1983).

In *Continental Airlines, Inc./Continental Express, Inc.*, 27 NMB 99 (1999), the Board based its decision that Ground Instructor and Flight Instructors were separate crafts or classes on the following distinctions: only the Flight Instructors were required to hold a commercial pilots license; the two groups were in different organizational units; the two groups had different compensation and benefits, with only the Flight Instructors’ compensation and benefits being based on the Carrier’s Pilot CBA.

There have been changes since the Board made that decision, including the fact that ExpressJet is no longer part of the Continental system. The Board’s 1999 *Continental* decision relied heavily on the fact that only Flight Instructors were required to be pilots. Currently at ExpressJet, both Ground Instructors and Flight Instructors are required to be pilots, as described in the CBA and Guidelines discussed above. Both Ground Instructors and Flight

Instructors fly the line. Pilots maintain seniority when they move into either instructor position, indicating that the Carrier expects their Pilots will often move into either of these positions. Additionally, all of these employees are part of the Training Department. Although they have different direct supervisors, they are all under the Director of Flight Training. Compensation varies, but the base rates of pay for all of the instructors are based on pilot compensation as described in the Pilots CBA.

Only Ground Instructors provide classroom instructions while some employees in both groups provide training in FTDs. It is not unusual for a craft or class of Flight Instructors to include employees engaged in classroom instruction along with employees who provide instruction in simulators or aircraft. See *American Airlines*, 30 NMB 30 (2002) (Ground Instructors and Flight Simulator Instructors were appropriately part of craft or class of Instructors); *Southwest Airlines Company*, 17 NMB 168 (1990) (certifying craft or class of "Flight/Ground School Instructors"); *United Airlines*, 9 NMB 266 (1982) (finding that instructors who functioned at the "classroom level" shared a community of interest with instructors who functioned at an "operational level").

The Ground Instructors share a community of interest with the Flight Instructors at ExpressJet and they are appropriately part of a combined craft or class of Instructors.

#### *Accretion*

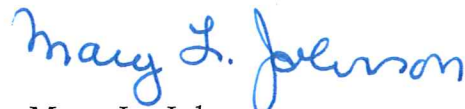
The Board's broad discretion to determine the manner in which it conducts investigations in representation disputes was upheld conclusively in *Brotherhood of Ry. & S.S. Clerks v. Ass'n for the Benefit of Non-Contract Employees*, 380 U.S. 650 (1965). In *Ross Aviation, Inc.* 22 NMB 89 (1994), the Board dismissed an organization's application because the employees it was seeking to represent were already covered by a Board certification, and, therefore, an election was unnecessary. The Board consistently follows this policy where it finds that an application covers employees who are members of a certified craft or class because these employees perform job functions traditionally performed by employees in that craft or class. See *e.g. Frontier Airlines, Inc.*, 41 NMB 202 (2014); *Southwest Airlines*, 39 NMB 246 (2011); *Southwest Airlines*, 38 NMB 87 (2011).

The Board requires all applications in representation matters to be supported by an adequate showing of interest. In this case, ALPA supported its application with the requisite showing of interest and accretion is appropriate.

CONCLUSION

The Board finds that ExpressJet's Ground Instructors are covered by ALPA's certification in NMB Case No. R-6717. As there is no further basis for investigation, NMB File No. CR-7173 is converted to NMB Case No. R-7500 and dismissed.

By direction of the NATIONAL MEDIATION BOARD



Mary L. Johnson  
General Counsel

Copies to:

Denise Harvill, VP People Resources

James Barbour, Director FLT OPS Training

Janette Geiser, Director People Admin

Marcus C. Migliore, Managing Attorney, Legal Department

David M. Semanchik, Sr. Attorney, Legal Department