In The Matter of the Arbitration Between

United Airlines Inc.

And

Board No. 2012
GR. No. 2012-U-11-14R Et Al
(Profit Sharing)

The Air Line Pilots Association, International

Hearing Held April 21, 2015
Before the System Board of Adjustment
Richard I. Bloch, Chairman
Chuck Vanderheiden, Company Appointed Member
Jennifer Coyne, Company Appointed Member
Fred Greene, Association Appointed Member
Joseph Pedata, Association Appointed Member

APPEARANCES

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OPINION

FACTS

The facts surrounding this case were detailed in the Board's January 5, 2015 Opinion and Award[1] and will not be recounted in detail here. A short summary will suffice.

[1] Board No. 2012-08, Grievance No. 2012-U-11-14R *et al.*, January 5, 2015. Throughout this discussion,

United Airlines ("Company") and the pilots represented by the Air Line Pilots Association, International (ALPA) negotiated a Profit Sharing Plan ("PSP") in 2003. The plan was made part of the 2003 United/ALPA Collective Bargaining Agreement ("CBA"). Shortly thereafter, however, the Company requested additional concessions from ALPA. Ultimately, the parties agreed to a PSP that would include "[a]ll domestic employees of UAL Corp. or United Airlines, Inc. (including all pilots) who have completed 1 year of service ... " and would pay from a pool comprised of "UAL Corporation consolidated net income," a concept that remained unchanged from the original language in the United Pilots 2003 CBA.[2]

United Airlines and Continental Airlines announced a merger of the two companies in May 2010. Previously, Continental pilots had participated in their own profit sharing plan but, by 2010, those participation rights had terminated.[3] Representatives of management and labor of both airlines attempted to construct a new combined profit sharing plan but, nearing the end of 2011, the parties, United, Continental and the two carriers' pilot representatives, had reached no agreement.

United and the sub-CO[4] pilot representative then executed their own agreement on December 30, 2011 with the intention that sub-CO pilots would receive a payout from the sub-UA PSP pool. The current grievance was filed at the time the Company disbursed profit sharing, claiming the Company had improperly expanded the ranks of eligible recipients and thereby diluted the available PSP pool resources, contrary to the

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[2] Presser Ex. 4 at Stamp 020848; Liability Opinion at 28.
[3] Tr., p. 385.
[4] Sub-CO is shorthand for sub-Continental. Like its companion term, sub-UA (sub-United) the reference is to the pre-merger stand-alone carriers.

terms of the sub-UA CBA, without agreement of the sub-UA Pilot group. Among the issues dealt with by the System Board of Adjustment was the question of:

> Whether UCH [United Continental Holdings, the successor holding company to UAL Corp] violated Letter 05-02, Exhibit C and Section 3-L-2 of the agreement by adopting a profit sharing plan for 2011 under which both sub-UA and sub-CO employees (instead of only sub-UA employees) participated.

In its January 5, 2015 Opinion, the System Board held that the Company had, in fact, violated the labor agreement, including Letter 05-02, finding that the originally-negotiated PSP at issue in the case was breached. The matter was remanded to the parties for consideration of an appropriate remedy.

ISSUE

What is the appropriate remedy for the violation in this case?

ASSOCIATION POSITION

ALPA claims the UCH profits, including sub-Continental profits, were to be included in the 2011 profit sharing pool as "UAL Corporation consolidated net income." To the extent the Company wished to award profit sharing to the sub-CO pilots, it was necessary that it establish a separate pool, as it had done previously for the employees of Mileage Plus Inc. so as not to reduce the pool defined in the 2003 United CBA. To the extent the Company wished to segregate sub-CO earnings in 2011, says the Association, it was incumbent upon it to secure ALPA's agreement, as it had done in 2010 through

the Transition and Process Agreement. Absent such a mutually-bargained adjustment, the sub-UA pilots are owed approximately $32 million for the year 2011.[5]

COMPANY POSITION

The Company contends no monetary remedy is appropriate: The System Board, it says, made no finding that the sub-CO income should be included in the profit sharing pool, nor is there any evidence that damages for the breach are warranted. In the final analysis, the sub-UA pilots received more income under the UCH calculations than would have been granted under the stand-alone plan. It requests that the grievance be denied.

Alternatively, even should the Board conclude that the PSP pool properly contained sub-CO earnings, the amount allocated to sub-UA pilots should be far less than that claimed by the Union in this case.

ANALYSIS

The issues dividing the parties in this case are two-fold: The first question concerns the size of the profit sharing pool available to sub-UA pilots under the 2011 PSP. The second surrounds the parties' differences over the share of the pool to be allocated to sub-UA pilots. On the first issue, the Association contends that, by agreement of the parties, the pool should have been funded by profits earned by both UCH's subsidiaries, including not just sub-UA, but also sub-CO, notwithstanding the

[5] In its request for remedy, ALPA requests "approximately $32 million as may be particularized in further discussions between the parties." (ALPA Closing Brief, at 13.)

ineligibility of sub-CO employees to share in the pool. The Company says sub-CO's profits should be included only if those who generated them were considered eligible to participate in the Plan. Where, as here, the System Board has ruled against their eligibility, it would be unfair and inequitable for sub-UA pilots to enjoy the fruits of sub-CO labors.

The Company maintains, among other things, that, while the System Board concluded, in the liability phase of this matter, that United erred by regarding sCAL pilots as eligible, "nothing in the majority's decision requires that the Company provide profit sharing to sub-United employees based on sub-Continental's profits."[6] Says the Company:

> In its liability decision, the majority concluded that the Company violated the Profit Sharing Provisions "by adopting a profit sharing plan for 2011 under which both sub-UA and sub-CO employees (instead of only sub-UA employees) participated." That holding requires that UCH maintain a profit sharing plan for sub-United employees separate from any plan maintained for sub-Continental employees but says nothing about how the profit sharing pool for sub-United employees be computed, much less that sub-United employees are entitled to profits earned by sub-Continental employees.[7]

It is true the Board rendered no explicit decision on the construction of the profit sharing pool: That is because the question before us, instead, was one of participant *eligibility* in the pool.[8] Here, on the other hand, we are asked to interpret language

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[6] Company Post Hearing brief, at 2.
[7] *Id.*, at 3.
[8] In its brief following the initial Remedy hearing, the Company posed the issue as whether it had violated the CBA "by adopting a profit sharing plan for 2011 under which both sub-UA and sub-CO employees (instead of only sub-UA employees) participated <u>in the distribution of 15 percent of the consolidated net income of UCH</u>."(Underscoring added.) As the Company recognized in that brief, (see p. 15) the Board deleted the underlined phrase. This was done not, as the Company suggests to "[imply] that the definition of the profit sharing pool depended on which employees participated..." but because any discussion of the size or nature of the pool was wholly irrelevant to the question of employee eligibility. Moreover, as will

dealing with the separate question of how the pool is to be constituted. The essence of the dispute dividing the parties is whether there is a necessary linkage between eligibility and the nature of the pool itself. Otherwise stated, should sub-CO profits be included notwithstanding those who helped generate them are ineligible to participate in their sharing?

The parties have devoted substantial time, in their arguments, to the equities of this matter -- whether it is fair for sub-UA pilots to be enriched by profits generated by sub-CO personnel crews or whether, on the other hand, that payoff should be seen as just dues for their extensive and extraordinary concessions during bargaining that attended the bankruptcy process. While reasonable arguments can be made on both sides of that issue, we need not, therefore do not, seek to rule on the respective equitable positions, and those considerations have played no controlling part in the consideration of this particular case since, we find, the clear language of the Plan and of the various bargained agreements compels the conclusion that the Union's claim for remedy has merit.[9]

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be apparent in this discussion, the genesis of the pool's definition stems not from a decision on who participates: That question has been resolved by agreement of the parties themselves.

[9] The Collective Bargaining Agreement between United Airlines and ALPA specifies, in explicit terms, that the Board's job is to interpret and apply the CBA. 9 Section 18-C of the CBA provides:

> 18-C-1 The Board shall have jurisdiction over disputes between any employee covered by this Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of this Agreement. The jurisdiction of the Board shall not extend to proposed changes in hours of employment, rates of compensation or working conditions covered by agreements between the parties.

We do not seek to either write or re-write contract language, nor do the parties expect such an exercise. As such, the critical question is what the written word of the agreements requires. To attempt to reshape the bargain struck by the signatory parties would be to abandon our role as "rights," (as distinguished from "interest") arbitrators and would, at the same time, step beyond the negotiated authority of the System Board of Adjustment as prescribed in the labor agreement itself.

The United/ALPA CBA - 2003

Following the Company's 2002 bankruptcy filing, United and ALPA participated in concessionary negotiations that resulted in substantial reductions in wages, benefits and work rules and, among other things, termination of the existing defined benefit pension plans. In 2003, the parties agreed to the creation of a Profit Sharing Plan, a goal that was included in the 2003 United/ALPA CBA. Section 3-M-2 of the Pilot Agreement specified that "all pilots will participate in a pre-tax profit sharing program with respect to calendar years beginning in 2005."[10] Section 3-M-2-b defined "pre-tax profit" as "consolidated UAL pre-tax earnings..." It is clear from the testimony and evidence in the record that "UAL" refers to UAL Corp., the holding company, as "distinguished from United," the operating entity, and that the reference to "consolidated UAL pre-tax earnings" means the combined earnings of the holding company's subsidiaries.[11]

The 2003 Re-Write, LOA 05-02 and the 2006 PSP

In response to the Company's request for additional concessions, including additional wage and work rule adjustments, the parties entered into Letter of Agreement 05-02, dated January 1, 2005, codifying their changes to the 2003 Pilot Agreement, which are recorded in the so-called "revised 2003 Pilot Agreement," (known, colloquially, as the "2003 Re-Write"). Exhibit C (Profit Sharing) to LOA 05-02, incorporated as Section 3-L-2 of the 2003 Re-Write, sets forth the agreed-to definitions

[10] 2003 Pilot Agreement, §3-M-2.

[11] Other provisions of Section 3 of the 2003 CBA speak to details as to the size of the pool (§3-M-2-c) as well as the pilots' share of the pool (§3-M-2-f) and, in 3-L-2-e, the Allocation ratio, to be discussed below.

of, among other things, pilot eligibility for participation in the PSP and, significant to this case, the specific definition of pre-tax earnings:

> 3-L-2-b Pre-Tax Earnings: UAL consolidated net income as determined in accordance with GAAP....[12]

In January 2006, the Company drafted and published the Profit Sharing Plan,[13] appended as an exhibit to the Company's 2006 Form 10K.[14] The terms of that plan shed some light on the context of this matter in terms of defining a "qualified employee". In the opening paragraph, the Company, (defined by that document as UAL Corporation), recognizes the contribution of United employees to the Chapter 11 reorganization by agreeing to reductions in pay, benefits and work rule changes. In return, the purpose of the Plan is to award all "qualified employees" eligible to receive an allocation with a "defined share of the Company's profits if the Company's Pre-Tax Profit" exceeds an established threshold during a given fiscal year.

A "qualified employee" is defined by that document as "all employees of the Employer who during an Award year are classified as regular full-time or regular part-time employees."

The merger between United and Continental was announced October 1, 2010. At the time, sub-CO pilots had no profit sharing plan, since their collective bargaining agreement did not, at the time, provide one. In response, the parties took steps, jointly,

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[12] Section 3-L-2-c (Profit Sharing Pool) explains the construction of the pool as being derived from "15 percent of Pre-Tax Earnings in each calendar year [after 2005 and 2006]." Section 3-L-2-e (allocation) specifies that the Profit Sharing Pool will be distributed on the basis of an employee's pro-rata share as determined by the ratio of the employee's Considered Earnings for the year (See § 3-L-2-h) to the aggregate amount of Considered Earnings for all eligible employees that year.
[13] Jt. Ex. 5, UAL Corporation Success Sharing Program – Profit Sharing Plan, ¶A.
[14] See Jt. Ex. 5.

to attempt to respond to the upcoming mismatch–wherein half of the newly merged pilot workforce would be unable to participate in profit sharing.[15]

Thus, in four-party negotiations that produced a "Transition and Process Agreement," the parties recorded their agreement that the void would be filled by a separate PSP for sub-employees, for 2010 only. For that year, it was understood those employees would be eligible to share profits (under their own plan) and that the parent holding company, now renamed United Continental Holding ("UCH") in view of the merger[16] would not be including the sub-CO profits for purposes of that year's UCH plan.[17] Accordingly, on September 23, 2010, the UAL Corporation amended the "UAL Corporation Success Sharing Program – Profit Sharing Plan" to provide, among other things, that:

> WHEREAS, the merger of UAL Corporation and Continental Airlines Inc. (Continental) is pending; and
>
> WHEREAS, the Board does not intend for Continental's financial performance to impact the plan for 2010;

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[15] The LOA expressly provided that its terms would survive replacement (therefore modification) of any CBA of which it was incorporated (see LOA 05-02, §19) and that its terms could be altered only by "a written instrument executed by all parties." (*Id.*)

[16] The Company's suggestion that the advent of the United-Continental Holdings Company should somehow negate the impact of a bargain drafted, in Letter 05-02, referring to "UAL consolidated net income." The Company says, that "While UCH may be the corporate successor to UAL as a matter of corporate law, this is a labor agreement in which economic reality and the intent of the parties must trump the intricacies of corporate law." The Board is unaware of any legal premise of that nature and, more importantly, concludes that the clear intent of the parties was, in fact, to include all Affiliate net income as "consolidated" in the calculations, unless other arrangements were made. We must reject, therefore, the Company's view that the Liability Opinion supports the conclusion that, for purposes of the profit-sharing pool, the term UAL covers the subsidiaries and affiliates that existed at the time of the agreement thereby including Mileage Plus, Inc. but excluding Continental Airlines. (Company's Supplementary brief, at 13.

[17] As noted in the January 5 Opinion, the UAL Corp. had numerous Affiliates at the time the 2006 PSP was adopted. However, only two of them, United Airlines Inc. and Mileage Plus Inc., were covered. (Tr. at 589-591). MPI employees participated in a separate bonus pool from that in which United employees participated. (See Opinion at 29, n. 40.)

> NOW THEREFORE, the plan is hereby amended, effective for the 2010 plan year/award year only, such that any reference to "Affiliate", "Company", "United", or "Employer" expressly excludes any entity that was not an Affiliate of the Company (as such terms are defined in the plan) January 1, 2010.

The content of this amendment speaks loudly to the Company's understanding of the then-current PSP operations : The explicit language quoted above reflects the holding company's intent that (1) Continental would not be considered an "Affiliate" and that (2), as a result CAL's profits would not "impact the plan for 2010." This explicit mechanism, designed to expressly exclude CAL for 2010, when considered in light of the language discussed above, reflects a concomitant recognition that, in its absence, the CAL profits would necessarily have been considered part of the holding company's consolidated income.

These various references, some drawn from collectively bargained agreements, others the product of unilateral company pronouncements, lead inescapably to the same conclusion: As originally drafted, a Plan agreed to and published by UAL Corporation, the holding company of a number of enterprises, including United Airlines, provided that the pool from which profit shares would be awarded was to be established by reference to profits generated by companies held by UAL. In this light, the parties' decision to vary what otherwise would have been a consolidated income approach designed to include the Continental affiliate was manifestly not a "relevant past practice," as characterized by the Company.[18] Rather, it was a negotiated fix clearly

[18] Co. Closing brief, p.20.

directed to an unusual, sensitive problem that was aimed at, explicitly tailored for, and restricted to, 2010.[19]

The Company argues that the mechanism devised by the parties in 2010 to separate profits between a sub-UA and a sub-CO profit sharing pool constitutes a "practice" reflecting the parties' general understanding of the type of linkage here sought by United. It argues that "UCH maintained separate profit sharing plans for sub-United and sub-Continental employees for a calendar year 2010", noting that such action was "exactly what the Board's liability decision would require by prohibiting the comingling of sub-United and sub-Continental in a single plan."[20] But the Company's observation is unpersuasive on several levels. As indicated above, and in the Opinion, the "commingling" found objectionable was related to the pilot eligibility issue, not to the constituency of pool funds. Moreover, the 2010 mechanism was manifestly not a "relevant past practice," as characterized by United.[21] As observed in the earlier Board decision, the genesis of the profit sharing pool's contents – the requirement that it be funded with holding company profits – was bargained agreements between the parties. So, too, was the change applicable to 2010 alone the product of mutual consent.

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[19] The Board recognized these agreements in its liability opinion:

> Among other things, the parties agreed that shared profits would be based on the "consolidated UAL pre-tax earnings" – the earnings of United's holding Company (then UAL Corp., subsequently United Continental Holdings (UCH)). Thus, the profit pool, to the extent it existed, would include funds from UAL subsidiaries and affiliates, as well as from United Airlines itself. (Opinion, at 26.)

The Board also stated:

> The pool to be made available to eligible employees was comprised of "UAL Corporation Consolidated Net Income," a concept that remained unchanged from the original language in the 2003 Collective Bargaining Agreement. (Opinion at 28.)

[20] Co. Closing Brief, at 20.

[21] *Id.*

The Company also suggests that the doctrine of "frustration of purpose" could lead one to conclude "that the merger of United and Continental altered the underlying facts on which Letter 05-02, Exhibit C was premised to such an extent that "UAL consolidated net income" could not be interpreted to mean "UCH consolidated net income" even though UCH was the corporate successor to UAL, and that the profits of the Continental subsidiary should have been excluded in calculating profit sharing for sub-UA employees.[22] But, we conclude, there is no frustration of purpose in this case: The purpose, as explicitly set forth in Letter 05-02, was to construct a Profit Sharing Plan to be funded by Affiliates' consolidated net income. The appearance of a new Affiliate in no way frustrated that purpose and was, in fact, contemplated by Appendix A of the 2006 PSP, which, among other things, defined the term "Employer", as meaning "the Company" [the holding company] and each Affiliate which is identified in Appendix A as may be revised from time to time by the Company."

The Company also contends that no monetary remedy is appropriate because sub-UA pilots actually benefited from the Company's calculation of profit sharing on a combined basis for 2011.[23] As contrasted to a calculation based on a stand-alone approach, sub-UA pilots received $3.8 million more in profit sharing for 2011 under the UCH Plan than if the payment had been calculated on the operating profits of the separate subsidiaries.[24] Whatever the impact of that calculation approach, the proper inquiry is the amount the sub-UA pilots lost as a result of the Company's having

[22] Company dissent in Liability Opinion, at 4.
[23] Company closing brief, at 12.
[24] See Kenny Decl., ¶ 19.

included sub-CO pilots in the distributions.[25] This, according to the evidence,[26] is roughly $32 million. We turn, now, to the question of whether, as argued, by the Company, this sum should be considered an impermissible "Windfall."

WINDFALL

In a series of post-hearing briefs, the parties have addressed, at the Board's request, general questions of remedy and, by a separate briefing exchange, the specific question of "Windfall." As the Union notes, a generally accepted definition is that a windfall exists when a benefit is both unanticipated and not caused by the recipient.[27] The evidence in this case persuades the Board that the remedy here sought by ALPA would fit neither of the requirements. It is, of course, the case that neither party to the various negotiated agreements foresaw, at the time they drafted and endorsed the profit sharing provisions of the sub-UA labor agreement, a merger of United Airlines and Continental Airlines, the latter having not been "even a gleam in [the] eyes of the corporate parent to be."[28] Nor, according to the testimony, was there any specific discussion during the bargaining over this subject of merger eventualities.[29] As to

[25] Contrary to the Company's assertion, the Liability Opinion did not rule out ALPA's argument that the remedy issue can be resolved "by noting simply that Pre-Tax Earnings are based on UAL's consolidated net income and that UAL has become UCH in the wake of the merger." The Board did, indeed, reject the Company's argument that the reference to "all domestic employees of UAL Corp." must necessarily include all employees of that holding Company's subsidiaries and affiliates. It noted, however, "a certain opacity to the bargain language, "language that, in the Board's judgment, was "troublesome", utilizing words "that raise, but do not clearly settle" the question of whether pilots other than United's should be considered as covered by the Plan." (See pp. 23-24.) Two points are relevant here: First, as noted, the particular language was problematical and, secondly, it all concerned the question of pilot eligibility.
[26] See Karg Decl. ¶7.
[27] See ALPA brief on "Windfall" issue, p. 3, citing Black's Law Dictionary: defining a "windfall" as "[a]n unanticipated benefit, usu. in the form of a profit and not caused by the recipient."
[28] Liability Opinion, at 24.
[29] See the testimony of Stephen Presser, Tr. 352.

"causation," the fact is that , as a negotiating and signatory partner to the CBA language ultimately adopted in the Plan itself, both ALPA and United are properly regarded as the causative factors whose agreement was the genesis of the bargain underlying this decision.

In summary, the Company vigorously argues, in this case, that, as concerns the 2011 PSP entitlement, the eligibility question must necessarily go hand-in-hand with the pool funding issue, lest one conclude that one group of pilots (here sub-UA) should profit, unfairly, from the efforts of their coworkers. As recognized in the Liability Opinion, however, bargaining history on Eligibility was clear and unrebutted, establishing that, notwithstanding language that was not happily drafted, the intention of the parties was readily apparent: Said the Board:

> … [V]iewing the language in the light of the testimonial and documentary evidence surrounding its origins makes clear the intent of the contracting parties to direct the contested PSP benefit to United employees, including pilots, with no provision to cover sub-CO pilots, whose employer was not, at the time, even a gleam in eyes of the corporate parent–to-be.[30]

In this case, on the other hand, the subject matter is different, concerning as it does, the composition of the PSP pool, as distinguished from its distribution. As to this inquiry. there is no bargaining history at all that would compel the conclusion that the concepts of funding and eligibility were necessarily joined and, for reasons discussed above, the language directs the opposite result, one that was, in fact, observed by the parties in practice: The Company created a separate pool for Mileage Plus International

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[30] Liability Opinion, at 24.

employees in 2006, and in 2010, when the sub-CO pilots' profit sharing plan had terminated, the parties signatory to the Transition Process Agreement modified the Continental labor agreement to cover sub-CO pilots for that year only, agreeing, as well, that, for 2010, the sub-CO profits would be the sole source of funding for the sub-CO PSP. At that time, as discussed above, UAL Corp. modified the 2006 sub-UA PSP document, reflecting the parties' agreement that sub-CO's 2010 financial performance would not impact the UAL Corp. PSP for 2010.[31]

To be sure, the United – Continental merger meaningfully altered the corporate makeup of the UAL Corp. holding company, but the prospect of the changes at issue here, we must conclude, were fully accommodated by both the Letter of Agreement and other bargained agreements beginning with the 2003 CBA, and as reflected in the PSP language discussed herein. These findings require the conclusion that the UCH PSP pool for 2011 should be considered, for calculation purposes, to include sub-CO earnings.

ALLOCATION

As indicated above,[32] the Company also argues that, even assuming the existence of a Profit Sharing Pool comprised of earnings from all UCH subsidiaries, the pr0-rata amount allocated to sub-UA pilots should be lower than here claimed by ALPA.[33] The

[31] See Joint Exhibit 7 and Liability Opinion, at 3-4.
[32] See Company Position, *supra,* at 4.
[33] The Company's Motion for an evidentiary hearing and the oral and written arguments that followed were premised on the advocates' reaction to a Confidential Draft opinion circulated among the System Board members. The Board need not, therefore does not, respond to any of the arguments drawn from the language of the draft, except to note that, to the extent any portions of the draft are characterized as a "holding" or "finding", or to the extent the Board session was characterized as a process limited to cleaning up typos or minor language issues, such characterizations are simply and emphatically wrong. To the extent the concept of a System Board of Adjustment, a mechanism that has both statutory and

Company contends the proper remedy amount should be $5 million which, when added to the profit sharing payouts already received by sub-UA pilots, would reflect the amount they would have received if the sub-CO pilots had been excluded from the 2011 UCH profits distribution.[34] The parties met before the Board for oral arguments on August 31, 2016, and the Board met in executive session on September 15.[35]

The general calculation methodology is not in material dispute. Section 3-L-2-e of the labor agreement sets forth the ratio by which the entitlement here at issue is determined.[36] The numerator consists of the eligible employees Considered Earnings for a particular year. The denominator is the total Considered Earnings of all eligible employees for that year. There is no dispute that the numerator in this case is $717 million – The 2011 Considered Earnings for sub-UA pilots. ALPA, however, says the denominator is $2.585 billion, based on its contention that all non-United employees (therefore all sub-CO employees) are ineligible and should be excluded from the denominator. United, for its part, maintains the denominator should be $4.291 billion,

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contractual roots, is to have true meaning, it must function as a group of authorized decision makers who gather to review, rewrite and if necessary re-think concepts proposed in the form of one or more drafts. Depending on the relationship of the particular parties, it is not uncommon for Board members to consult with their respective advocates in preparation for a meeting of the Board and, in the final analysis, such consultation can, under the appropriate circumstances, both inform the colloquy among Board members and enhance the quality and responsiveness of the resulting decision. But the draft is just that, a document that is limitlessly malleable in the hands of the co-equal decision makers: Prior to its execution by the members and release for distribution, it is entitled to no presumptive weight or impact in and of itself.

[34] Company Motion, at 4.

[35] Prior to that meeting, the parties filed additional briefs on the Remedy issues.

[36] The provision states:

> Section 3-L-2-e Allocation – For eligible employee, a pro rata share of the Profit Sharing Pool for each calendar year based on the ratio of the employee's Considered Earnings for the year to the aggregate amount of Considered Earnings for all eligible employees that year.

based on its position that only sub-CO pilots, having been found ineligible, should be excluded.[37]

Both sides claim the question as to which groups properly inhabit the denominator was answered by the January 2015 liability decision. The Company says nothing in that decision held ineligible the non-pilot sub-CO groups that received 2011 profit-share distributions[38]: The holding in the liability case, United claims, was limited to the finding that United violated the sub-UA pilots' CBA when it added sub-CO *pilots* to the 2011 UCH profit-share distribution.[39] But, for the reasons that follow, we find such conclusion belied both by the issue posed by the parties and the Board's answer in response.

In its timeliness challenge, the Company claimed the Union was obliged to have filed its grievance in early 2011, at the time the Company admitted the non-sub-UA employees to the Profit-Sharing Plan. The Company maintains that, while the System Board of Adjustment found, in the Liability Opinion, that CAL pilots were ineligible to participate, it left undisturbed the Company's March 2011 actions in including CAL non-

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[37] The Union's calculation results in a 27.7 percent share of the UCH profit-share pool for 2011, with a resulting total of $68 million, $36 million of which has already been received by the UAL pilots. The Company's analysis yields a 16.7 percent share of the same size pool with a total of $41 million available to the pilots. The Board assumes, for purposes of our deliberations that these calculations roughly approximate the amounts at issue. We take arbitral notice of these approximations based on the parties' respective arguments and are not, by these reckonings, intending to rule on the evidentiary objections surrounding the remedy stage of these proceedings.
[38] Company Motion, at 7.
[39] Says United: "The Board," in the liability phase, "...confirmed that ALPA's grievance did not include a challenge to the 2011 Plan amendments...ALPA cannot now, in a remedy hearing, assert a claim under 3-L-2 of the CBA regarding the inclusion of CAL non-pilot employees that it did not, and could not, assert during the liability phase of this arbitration." (Remedy Hearing Brief, (Aug. 19, 2016), at 10.)

pilot employees.[40] But this was not the case. While it is true the Union did not lodge an immediate protest at the time of the Company's March 3, 2011 Skynet bulletin, the System Board found that fact not fatal to the subsequent filing. The Company, by its current motion, argues that the Board's holding on timeliness applied only to the pilots. But, as indicated earlier, that is not what the grievance said, nor was it the issue proposed by the parties and, most important, it was not what the Board concluded in its response to the timeliness issue.

In its decision, the Board reviewed the timeline and the respective arguments concerning time limits:

> The February 2012 date, says ALPA, is the critical staring line for measuring the time limits. The Company, for its part, contends the clock started earlier: It directs the Board's attention to the February 17, 2011 adoption of the PSP for calendar year 2011, one in which Continental employees, among others, would participate. The new plan, adopted unilaterally by the Company, was referenced in UCH's 10K on February 22, 2011. Moreover, United issued a Skynet on March 3, 2011, clearly noting that Continental employees would participate in the Plan. The bulletin published by UCH that day announced that, "US Payroll co-workers, both represented and non-represented, who are employed by the United and Continental subsidiaries...will participate in the new United's Profit-Sharing Plan beginning in 2011." On March 4, 2011, ALPA published a Master Executive Council Update that expressly acknowledged United's announcement the previous day. Under the circumstances, says the Company, ALPA can hardly claim ignorance of the Company's plan to include sub-CO employees. ALPA protested neither the 2011 adoption nor

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[40] The Company states that "... during the liability phase of this case, ALPA did not even attempt to rebut United's argument that a claim regarding the inclusion of CAL non-pilot employees would have arisen at the time the 2011 Plan Amendments were announced, and ALPA explicitly conceded that it was not challenging those 2011 Plan Amendments. ... and the Board then confirmed that ALPA's grievance did not include a challenge to the 2000 Plan Amendments. (See Liability Op. at 16-17) ("ALPA protested neither the 2011 adoption nor announcement of the Plan ...") ALPA cannot now in a remedy hearing, assert a claim under Section 3-L-2 of the CBA regarding the inclusion of CAL non-pilot employees that it did not, and could not, assert during the liability phase of this arbitration." (Company Remedy Hearing Brief [August 19, 2016], at 10.)

> announcement of the Plan to include sub-CO pilots. The Company says it should have: The actions taken in 2011, it contends, amounted to notice to the Union that required a grievance within the bargained time limits if a complaint were to be considered timely. Thus, the Company maintains, the grievance should have been filed within 180 days after March 3, 2011.[41]

Significantly, the Board rejected United's timeliness claim, finding that the Company's actions did *not* serve to start the grievance time clock:

> The contractual test of whether, in 2011, ALPA pilots "reasonably would have had knowledge" of the facts underlying the grievance requires a careful examination of all surrounding facts. To be sure, it is not inconceivable that the Company's announcement of its plan to cover not only United but also the newly merged Continental employees could have raised the specter that Continental pilots would be eligible to receive disbursements, arguably contrary to the "conflict" provision of the 2011 PSP document. That provision makes clear the Plan was not to be applied in a manner conflicting with the bargained terms of the CBA, which limited disbursements to employees with an existing Plan. As will be discussed however under the specific circumstances surrounding these parties at the time, one cannot conclude that reasonable knowledge of critical facts should be imputed to ALPA at the time. First, the Company's announcement of its intent to share profits was made well in advance of anyone's knowledge as to whether profits would exist at all. Moreover, Continental pilots had no contractual rights to participate in profit sharing at the time: The definition of "Qualified Employee" under the 2006 Profit-Sharing Plan, explicitly excluded "Collective Bargaining Employees who are covered by a collective bargaining agreement which does not expressly provide for coverage under a profit-sharing bonus plan such as the Plan..." Surely, the Company's announcement of the comprehensive coverage of CAL "employees" did not in and of itself, seal the deal with respect to pilots.[42]

The Company reads this section as holding that while the actions at issue had not "sealed the deal" with respect to pilots, it had done so with respect to the other non-pilot sub-CO employees. But that conclusion misses the import of the Board's conclusion. As noted in the Opinion, the Company's announcement came at a time the parties were

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[41] Opinion at 16-17, footnotes omitted.

[42] *Id.*, at 17-18, footnotes omitted.

attempting to negotiate an amended United plan document to include profit sharing for all domestic employees, including Continental employees. At the time of the Company's announcement that sub-CO "employees" would be eligible, while sub-CO pilots would not then qualify (there being no existing profit sharing plan for them at the time in their CBA), "both parties fully expected and intended the Continental pilots would ultimately (but not then) be covered." The Board observed that "there were no facts at the time that would have suggested the necessity of adversary actions at that time. Indeed, during the JCBA negotiations in December 2011, the Company offered to extend profit sharing to Continental pilots in exchange for the United pilots receiving furlough protection."[43] This overall context of the negotiations, aimed at including the full range of previously ineligible employees, including pilots, led the Board to conclude that when the sub-CO pilot group was added to the plan, without United MEC approval, the grievance claiming a 3-L violation in response to adding both pilot and non-pilot sub-CO employees could be timely filed, due to the "specific circumstances surrounding these parties at the time."[44] FN.

To be sure, the Opinion is replete with references to sub-CO pilots, with no accompanying mention of "sub-CO employees." The Company directs the Board's attention to both opening and closing segments of the 2015 Opinion, for example, which state, in relevant part:

> The dispute in this case centers over United's decision to allow Continental Air Line (Occasionally "CAL") pilots to participate in a Profit-Sharing Plan

[43] Opinion, at 19-20.
[44] *Id.*, at 17.

> ("PSP") originally negotiated between ALPA and United in 2003 and included in the 2003 United/ALPA Collective Bargaining Agreement.[45]
>
> ...
>
> For the reasons set forth herein we are persuaded that the Plan here at issue was not intended to include sub-CO pilots, absent mutual agreement of the parties.[i] [46]

Given the focus of the Liability Opinion on sub-CO pilots, the Company maintains, as distinguished from other non-pilot sub-CO employees, it follows that the remedy standard, too, should be constructed with sole reference to that same group[47]:

> ALPA knew or should have known that any money damages remedy in this case would address the CAL pilots only, rather than the other CAL employee groups, because it was *ALPA's express arguments* during the liability phase that narrowed the record to the question of the CAL pilots' eligibility for 2011 Profit Sharing.[48]

But the recurring references to sub-CO pilots, while responding to the specific event that inspired the grievance, were premised on the Board's finding that the answer to Issue 2 of the Opinion – whether UCH violated the labor agreement by including both sub-UA and sub-CO *employees* (the question both asked and answered in the Opinion) - was "yes." [49]

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[45] Opinion, at 2.
[46] Id., at 30.
[47] Company Reply Brief (August 2, 2016) at 4.
[48] *Id.*, at 1.
[49] In its April 12, 2013 Post-Hearing Brief in the liability phase, the Company posed, as one of the "issues presented":

> Whether UCH violated Letter 05-02, Exhibit C, and Section 3-L-2 of the Agreement by adopting a Profit-Sharing Plan for 2011 under which both sub-UA and sub-CO employees (instead of only sub-UA employees) participated in the distribution of 15 percent of the consolidated net income of UCH. (At 5.)

The Union Brief, filed the same day, stated the issue in relevant part, as:

Thus, contrary to the Company's suggestion here, neither the nature of the Union's claims nor the arguments in pursuit of them served to narrow the scope of the grievance or to ratify the earlier actions by the Company in expanding the United Profit-Sharing Plan to accommodate non-United personnel. Said the Board:

> In the overall, therefore, it may not be said that the announcement of the Plan itself, in early 2011, should have been considered a red flag requiring ALPA's immediate protest, from a contractual standpoint. When considered together with the fact there were, at the time, neither profits nor disbursements and that, in any event, both parties intended that CAL pilots *would* be covered by the Plan, there is no reason to conclude that March 2011 should be the contractually significant starting line date [for the time limit clock to be running] for purposes of Section 17.[50]

To the extent there existed confusion as to the breadth of the current grievance (this, notwithstanding the explicit terms adopted by the Board in its statement of the issue) one may look to the Company's decision to pursue the agreement with the Continental pilots outside the confines of the four party negotiations and the consequent lack of direct communication with the United ALPA group. On this point, said the Board:

> The record is also characterized by a general lack of specific bilateral discussions at the time as to the overall scope and application of the PSP, a fact that underlies ALPA's current claim that the Company never sought confirmation from ALPA that the Plan was "reasonably acceptable" to the Union.

ALPA contends that the Company violated the Bankruptcy Exit Agreement, Letter 05-02, Exhibit C, and Section 3-L-2 of the governing Collective Bargaining Agreement by making profit-sharing distributions to employees of Continental and related entities in February 2012 .... (At 2).

For a full discussion of the timeliness issue, see Liability Opinion, at 15-22.
[50] *Id,* 21-22.

> The precise extent of the Company's contractual obligation to ensure the PSP was, in the words of the LOA05-02 "reasonably acceptable to the Union" is not fully clear. Whether this understanding anticipated notice, discussions, bargaining or some other mechanism is not apparent either from the language itself or from the record in this case. Surely, however, *some* sort of meeting of the minds was expected in drafting those words, and one can conclude that neither the original unilateral announcement of intentions by the Company nor the subsequent 10K publication satisfied the contractual mandate of securing some indication of reasonable acceptability to the Union. Nor, for the same reasons above, may the Union's general silence prior to the filing its grievance be construed as acceptance.[51]

Nothing in these holdings, therefore, should be read as segregating non-pilot sub-CO employees from the pilots or somehow endorsing the Company's March actions in adding them to the United Plan. These findings in the Liability Opinion require the conclusion that, for purposes of applying Section 3-L-2-e of the Labor Agreement[52], the sub-CO employees must be considered to have been ineligible and, accordingly, not to be included in the denominator of the algorithm referenced therein.

The evidence submitted in his case establishes that the Company's breach in the profit sharing distribution in 2012 for 2011 profits amounted to approximately $32 million. Because it is apparent there may be minor questions surrounding the evidence on this point, the matter is returned to the parties for further discussions in refining the specifics. The System Board will retain jurisdiction over disputes arising in the process of such refinement.

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[51] *Id*, at 20-21.
[52] See n. 5, *supra*.

United/ALPA Gr. 2012-U-14R et al., p. 24

AWARD

The grievance is granted, with damages assessed at approximately $32 million, to be calculated as the profit sharing monies lost by including sub-CO employees in the distribution here contested. In an effort to attain precision on that approximation, the matter is remanded to the parties for discussion. The System Board will retain jurisdiction over disputes arising in the course of seeking such refinement.

Richard I. Bloch, Chairman

dissent

Chuck Vanderheiden, Company Appointed Member

- DISSENT

Jennifer Coyne, Company Appointed Member

Fred Greene, Association Appointed Member

Joseph Pedata, Association Appointed Member

September 16, 2016

DISSENT OF THE COMPANY BOARD MEMBERS

We dissent from the Board's determination in today's Award that the Liability Opinion resolved the timeliness issues in this case based on the grounds that the grievance was timely as to sub-CO employees, rather than sub-CO pilots. (Award at 15-23.) In the Liability Opinion, the Board stated that it was "not inconceivable that the Company's [March 2011] announcement of its plan to cover not only United but also the newly-merged Continental employees could have raised the specter that Continental pilots would be eligible to receive disbursements," but the Board noted that "Continental pilots had no contractual rights to participate in profit sharing at the time," which was significant because the profit-share plan "explicitly excluded 'Collective Bargaining Employees who are covered by a collective bargaining agreement which does not expressly provide for coverage under a profit sharing bonus plan.'" (Liability Opinion at 17-18.) It is undisputed between the parties that the sub-CO pilots were unique among the sub-CO employee groups at the time of the March 2011 announcement because they lacked a collective bargaining right to profit-sharing, unlike each of the other sub-CO employee groups. Indeed, ALPA highlighted this distinction regarding the sub-CO pilots repeatedly in its post-hearing briefs on the timeliness issue. (*See* United Remedy Hearing Brief at 4-8.) Based on these facts and this distinction, the Board concluded in the timeliness section of the Liability Opinion as follows: "Surely, the Company's announcement of the comprehensive coverage of sub-CO 'employees' did not, in and of itself, seal the deal with respect to pilots." (Liability Opinion at 18.)

The Board's assertion in this Award that the Liability Opinion established that ALPA's grievance was timely as to all sub-CO employees, rather than as to sub-CO pilots, is

irreconcilable with the Board's own statements in the Liability Opinion, including its statement that the Company's March 2011 announcement "did not, in and of itself, seal the deal with respect to pilots." On any fair reading of the Liability Opinion, the Board's determination that ALPA's grievance was timely was inextricably tied to its conclusion that ALPA's grievance was challenging the Company's December 2011 agreement with the ALPA MEC which "unilaterally implemented a Profit Sharing Plan for *Continental pilots*." (Liability Opinion at 31, note 44) (emphasis added.) The December 2011 agreement purported to make the *sub-CO pilots* eligible for the distribution of 2011 UCH profits, but the eligibility for *all other sub-CO groups* had already been established by the March 2011 announcement of the 2011 Plan. The Board's statement today that "there were no facts at the time [of the March 2011 announcement] that would have suggested the necessity of adversary actions at that time [by ALPA]" is simply inaccurate with respect to the non-pilot sub-CO groups. If ALPA wanted to file a timely grievance regarding the non-pilot sub-CO groups, it was obligated to do so within 180 days of the March 2011 announcement. Of course, as the Board stated explicitly in the Liability Opinion, "ALPA protested neither the 2011 adoption nor the [March 2011] announcement of the Plan."[1]

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[1] The Board's repeated reference to sub-CO pilots in its timeliness ruling was based on ALPA's repeated series of pilot-centric arguments on the subject. This cannot be disputed. In fact, when United argued in the liability phase that the March 2011 announcement "allowing sub-CO employees to share in the 2011 profits" provided "the facts on which [ALPA's] grievance is based," ALPA responded that United was attempting "to redraft ALPA's actual grievance so as to make it more vulnerable to a claim of untimeliness." *See* United Post-Hearing Brief of April 12, 2013 at 30; ALPA Reply Brief of May 10, 2013 at 4. The Board's Award today inexplicably makes no mention of ALPA's demonstrable effort to narrow the issue to the sub-CO pilots in order to prevail on the timeliness issue.

In today's Opinion, the Board makes two other statements that purportedly support its conclusion that the Liability Opinion deemed ALPA's grievance timely as to all sub-CO employees. *First,* the Board notes that "the Company's [March 2011] announcement came at a time the parties were attempting to negotiate an amended United plan document to include profit sharing for all domestic employees, including Continental employees." (Liability Opinion at 19-20.) But the fact that ALPA and United were negotiating for a new pilot contract in March 2011 is surely not relevant to the question of whether the March 2011 announcement started the grievance clock for non-pilot sub-CO employees. There is no dispute that under the profit-share terms announced by the Company in March 2011, non-pilot sub-CO employees were entitled to a 2011 profit-share distribution because they -- unlike the sub-CO pilots at the time -- had a collective bargaining right to profit-sharing. If ALPA believed that the addition of non-pilot sub-CO employees violated the United Pilot CBA, they were on full notice to grieve such a claim in March 2011. It goes without saying that the Liability Opinion does not stand for the proposition that a grievance limitations period is tolled for an indefinite period if there are ongoing negotiations that might produce an agreement that resolves the dispute at issue. Today's Award is in error to the extent that it adopts this misguided standard for tolling a grievance limitations period.

Second, as quoted in today's Award, the timeliness section of the Liability Opinion also stated that "the Company's [March 2011] announcement of its intent to share profits was made well in advance of anyone's knowledge as to whether profits would exist at all." (Liability Opinion at 17.) But it is clear that the timeliness analysis in the Liability Opinion was not principally, or even significantly, focused on this one-sentence factual statement. ALPA did not

rest its timeliness position on the fact that profit-shares for 2011 had not been calculated in March 2011, nor did the Board rest its opinion on this fact. On the timeliness issue, ALPA and the Board both focused on the pilot-specific uncertainty that existed with respect to profit-share eligibility at the time of the March 2011 announcement. (United Remedy Hearing Brief at 3-12.) If ALPA had argued to the Board that its March 2012 grievance was timely *solely* because exact profit amounts for 2011 were not known at the time of the March 2011 announcement, it seems almost certain that the Board would have rejected the grievance as untimely. And yet, in reviewing -- and we respectfully believe revising -- the history of the timeliness issues during the liability phase of this case, this is precisely the timeliness standard that the Board has now essentially adopted in today's Award. This conclusion is in error.

For the foregoing reasons, we dissent.

Jennifer Coyne /cjv
Jennifer Coyne
Company-Appointed Member

Chuck Vanderheiden
Company-Appointed Member

CONCURRENCE OF THE ASSOCIATION BOARD MEMBERS

In their Dissent, the Company Board representatives continue the recent effort by the Company's new lawyers to challenge the System Board Majority's Remedy Decision on the basis of a crabbed misreading of the Board's previous decision on timeliness but to no avail. On the contrary, the Remedy Decision correctly rejects the contention that the timeliness determination depended solely on the purported eligibility of sub-CO pilots for profit sharing in March of 2011.

The Dissent's logic dissolves on its contention that 1) "the eligibility for *all other sub-CO groups* had already been established by the March 2011 announcement of the 2011 Plan" (emphasis in original) and 2) "the fact that ALPA and United were negotiating for a new pilot contract in March 2011 is surely not relevant to the question of whether the March 2011 announcement started the grievance clock for non-pilot sub-CO employees." Dissent at 2–3.

What the Dissent willfully ignores in so arguing is the fact that in negotiating for a JCBA in 2011, the sub-United pilots were negotiating to amend a pre-existing CBA that excluded **any** sub-CO employee—not just pilots—from participation in the sub-United profit sharing plan. It also ignores the fact that the Majority Decision on Liability found that because all parties shared the expectation that these negotiations would succeed, the sub-United pilots had no reason to believe in March 2011 that the Company would defy extant contract restrictions and unilaterally alter the profit sharing plan in 2012 even if the expected JCBA did not eventuate.[1]

[1] The current Dissent also flies in the face of the Company representatives' prior Dissent to the Liability Decision, which downplays the significance of the sub-CO pilots to proclaim, "Rather, ALPA contends that under Letter 05-02, Exhibit C, and Section 3-L, all of the profit attributable to the efforts of **all sub-Continental employees** should be distributed solely to sub-United employees." Liability Dissent at 3 (emphasis added); *see also id.* at 4 (decrying "the

Notwithstanding their attempt to parse the Liability Decision to the Company's advantage, the dissenters do not and cannot legitimately challenge the fact that the Majority's Remedy Decision entirely fulfills the essential function of a System Board as enunciated by the Neutral at the most recent hearing in this case: namely, to "get it right, to get the right answers." August 31, 2016, Transcript at 99. Equally important, and entirely consistent with its decision in the liability phase, the Board got the remedy decision "right" in the "right" way: not by altering the parties' contract to fit the various theories advanced by the Company to reshape the bargain the parties had actually struck, but by respecting that bargain and the actual terms to which the parties agreed in the dark days of bankruptcy and which had not changed since bankruptcy. Just like the Board did in its Liability Decision, in its Remedy Decision, the Board considers every single one of the Company's appeals (to a belated theory on the timeliness issue or "fairness" or simple outrage) but in each case rejects them to remain true to the actual language of the actual contract at issue in this case. *See, e.g.*, Remedy Decision at 6, 9 & n.16, 11, 12, 14, 15, 23.

In spite of the Company's multitudinous efforts to convince the Board to ignore it, the plain language of LOA 05-02 and CBA § 3-L-2, as confirmed by bargaining history the Company never challenged or even deigned to offer evidence on, established that the profit sharing plan at issue was only open to sub-UA employees (not the employees of any other "affiliate") and was to be funded by the profits of the holding company (regardless of what particular name was given to the holding company at any given point in time). And while it is true that the parties always had the ability to negotiate a change in that language, the ineluctable fact of the matter is that the parties negotiated no change in advance of the 2012 distribution of holding company profits earned in 2011—a fact the Company does not even attempt to

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majority's conclusion that the definition of 'eligibility' ... precluded participation of sub-Continental **employees**" (emphasis added).

challenge, choosing instead to argue that it somehow had the authority to impose a unilateral change of that language.

Of course, nothing could be more destructive of the collective bargaining relationship than a decision giving one of the parties the unilateral authority to undo a bilateral agreement. The Board Majority therefore was indisputably "right" in declining the Company's invitation to undo the collective bargaining relationship in this instance and, instead, make sure that its decision on damages, like its prior decision on liability, derived its essence from the agreements the parties actually made and not some other "agreement" the Company wished they had made or which the Company simply preferred in order to save it money it had committed to paying the sub-UA pilots.

The Board was also indisputably "right" in rejecting the Company's efforts to make this process an exercise in spinning specific instances of phrasing in the Liability Decision so as to render the specific language in the parties' contract inoperative. And the Board was "right" not to accept the Company's self-serving re-interpretation of the Board's Liability Decision, "right" not to permit the Company to put its own self-serving gloss on what the Union's grievance actually claimed and "right" not to permit the Company to read out of the record—and, indeed, existence—arguments the Union made in its briefs following the liability hearing and its initial remedy brief that triggered the start of the remedy phase, the critical portions of which were read into the record during the August 31, 2016, hearing—for the express purpose of making sure that all concerned would recognize that they were indeed part of the extensive record in this case.

On only one point do the Association members of the Board take issue with the Majority's Remedy Decision, and that has to do with the small portion of the decision going to the procedure applied in this case. *See* Remedy Decision at 15 n.33. As the Association made

clear in its latest briefs (i.e., the ones submitted in the wake of the Company's effort to reopen the evidence and the briefing after the issuance of the Board's initial draft decision on remedy), the hyperextended process applied here to reach the "right" decision on substantive issues is potentially as destructive of the ability of the parties to resolve disputes between them as is the Company's insistence that it had the right unilaterally to alter a struck bargain potentially destructive to the collective bargaining process. Having made that point abundantly clear in the Association's most recent briefs and at the recent August 31, 2016, hearing, the Association Board members see no need to repeat those arguments again here.

For this concurring opinion, rather, please permit us to say only that while there is a certain temptation to adopt an "all's well that ends well" position on the process issues, we continue to be concerned that the process applied here threatens to eliminate the "ends" portion of that formula and make the dispute resolution process truly endless. While it is well settled that the resolution of major disputes under the Railway Labor Act is intended to be virtually endless, no such presumption has been extended to the resolution of minor disputes, including the instant grievance. To the extent the Remedy Decision could be interpreted to suggest that the dispute resolution process at this airline can also be deemed to be virtually endless, we respectfully beg to differ.

In view of all of the above, including the single reservation enunciated, we the Association Board Members concur with the Board's Remedy Decision.

Fred Greene
Association-Appointed Member

Joseph Pedata
Association-Appointed Member

Dated: September 29, 2016