

**UNITED AIRLINES – IBT  
SYSTEM BOARD OF ADJUSTMENT  
GRIEVANCE NO. HO-0131028-01**

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In the Matter of the Arbitration between

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AIRLINE DIVISION,**

Union,

- and -

**UNITED AIRLINES, INC.**

Employer

**Re: Resource Utilization Letter  
of Interpretation**

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**SYSTEM BOARD OF ADJUSTMENT**

Ralph S. Berger, Esq., Neutral Member and Chair  
Clacy Griswold, Union Member  
Dixon McKenzie, Company Member

**APPEARANCES**

**For the Union:**

Ed Gleason, Esq.  
Joshua D. McInerney, Esq.  
International Brotherhood of Teamsters

**For the Employer:**

Gary S. Kaplan, Esq.  
Seyfarth Shaw LLP

The undersigned, pursuant to the selection of the parties, was duly designated to serve as Neutral Member and Chair of the System Board of Adjustment hearing the dispute described below. A hearing was held on April 9, 2014, June 26, 2014, and June

4, 2015. The testimony was transcribed. Both parties were afforded a full opportunity to examine and cross-examine witnesses, submit evidence, and present arguments in support of their respective positions. Post-hearing briefs were received by the undersigned on September 25, 2015. The record was closed at that time. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in preparation and issuance of this Opinion and Award.

### **THE ISSUE:**

The parties were unable to agree upon a stipulated issue for arbitral determination. The Union proposed the following:

Is the March 19, 2012 resource utilization letter of agreement between the parties in effect?

(Transcript (“Tr.”) I p. 13.)<sup>1</sup> The Employer declined to stipulate to the Union’s formulation of the issue. Instead it proposed the following:

Whether the Union has a unilateral right to terminate the March 19, 2012 letter of interpretation/resource utilization letter?<sup>2</sup>

(Tr. I p. 14.) The parties agreed that the Board would determine the issue. After studying the record developed at the hearing and the arguments advanced by the parties in their post-hearing briefs, the Board finds that the Union’s formulation of the issue best sets forth that which needs to be determined in this case.

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<sup>1</sup> “Tr. I” shall refer to the transcript of the April 9, 2014 proceedings. “Tr. II” shall refer to the transcript of the June 26, 2014 proceedings. “Tr. III” shall refer to the transcript of the June 4, 2015 proceedings.

<sup>2</sup> In its post-hearing brief, the Company suggests that the issue should be stated as follows: (1) Is the RUL in effect? (2) Does the Union have the unilateral right to terminate the RUL? (3) Did the Company’s application for NMB-mediated traditional RLA bargaining pursuant to the Protocol Agreement’s termination clause – which expressly provides that “either party may terminate [that Agreement] on ten (10) days’ written notice . . . at any time,” in which event “the Parties shall revert to traditional RLA bargaining” – in any way vitiate or modify the RUL or Parties’ respective rights and obligations thereunder? (Company Brief pp. 24-25.)

**RELEVANT CONTRACT PROVISIONS:**

**COLLECTIVE BARGAINING AGREEMENT BETWEEN CONTINENTAL AIRLINES AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

Article I, Section D - Successorship And Mergers<sup>3</sup>

\* \* \*

3. In the event of a merger of airline operations between the Company and another air carrier the Company will require, as a condition of any such operational merger that provisions be included requiring that the surviving carrier provide for fair and equitable integration of the pre-merger technician and related seniority list in accordance with Sections 3 and 13 of the Allegheny Mohawk LPPs.
4. In the event of a merger of airline operations, this Agreement shall be considered to be amendable as provided in the Duration Article and Section 6 of the Railway Labor Act. Integration of the technician and related craft and class groups shall not occur until the applicable seniority lists are merged pursuant to procedures as described above, and agreement is reached over rates of pay, rules, and working conditions for the post-merger craft or class. Prior to such agreement, the terms and conditions of this Agreement shall continue to apply to the employees whose names appear on the Company's technician and related seniority list.
5. The following additional requirements shall be applicable in the event of a merger, purchase or acquisition involving the Company, regardless of the identity of the surviving carrier or whether formerly separate operations are to be integrated.

\* \* \*

- c. The maintenance operations of the Company and those of the other air carrier shall be kept separate unless and until the processes described in the paragraphs (D) (3) and (4) above are completed. During such time of separate operations, technician and related employees shall not be interchanged without the Union's written consent.
- d. Until the processes described in paragraphs (D) (3) and (4) above are completed, no employee covered by this Agreement shall be reduced in status or pay category as an affect of the merger, purchase or acquisition.

(Joint Exhibit 1.)

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<sup>3</sup> The identical contract language is found in Article I, Section D, of the Sub-United collective bargaining agreement.

## **BACKGROUND**

The International Brotherhood of Teamsters, Airline Division (“IBT” or “Union”) has been the collective bargaining representative of the mechanics at Continental Airlines (“Sub-CAL”) and United Air Lines (“Sub-United”) (together, the “Company”) since 1997 and 2008, respectively. The Union is a party to separate, stand-alone collective bargaining agreements with Sub-CAL (“Sub-CAL CBA”) and Sub-United (“Sub-United CBA”). The terms of these CBAs have remained in effect during the parties’ negotiations for an amalgamated collective bargaining agreement (“amalgamated CBA” or “joint CBA”) representing a single Mechanics and Related class.

In May 2010, Sub-CAL and Sub-United announced their merger.<sup>4</sup> Upon the merger announcement the parties agreed to harmonize the Sub-United CBA as much as possible with the Sub-CAL CBA.<sup>5</sup> On January 5, 2012, shortly after entering into the Sub-United CBA, Union and Company representatives met to discuss the integration of the Company’s maintenance operations and how to structure a resource utilization agreement to avoid negative consequences for employees and costly disruptions to business until an amalgamated CBA was in place. During the meeting, the Company advised Union officials that it had obtained a single operating certificate from the FAA which would permit it to begin integrating operations, and that it wanted to begin moving forward on the integration as time was of the essence in the fleet redeployment process.

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<sup>4</sup> Air Micronesia is also a party to the merger, and has a collective bargaining agreement with the Union.

<sup>5</sup> A Letter of Agreement (“LOA 28”) entitled “Amalgamation Process & Resource Utilization During Transition Before Final Amalgamation” is attached to the Sub-United CBA. LOA 28 provides that, as soon as practicable after the ratification of the Sub-United CBA, the parties would adopt a “mutually acceptable process providing for the full, system-wide utilization of employees under either CBA . . . to perform work on either Carrier’s equipment or premises . . . .” (Joint Exhibit 2.) The parties disagree over whether Sub-Continental is a party to LOA 28.

The parties met again on January 27, 2012, at which time the Company proposed to the Union that, in exchange for a temporary agreement regarding the cross-utilization of mechanics, it would avoid their discharge or displacement as a possible consequence of redeployment. Marcel Delhommeau, the Company's Managing Director for Labor Relations, submitted a first draft of the resource utilization agreement ("RUL" or "Letter") to the Union on January 30, 2012. The proposed duration clause of the draft stated:

This Letter of Agreement will remain in effect until December 31, 2012, and will continue in effect thereafter subject to such amendments and modifications as may be agreed to in conference at the request of either party. Either party may serve notice of its desire for such conference upon the other party no earlier than October 31, 2012.

(Joint Exhibit 3.) On February 6, 2012, Union counsel Ed Gleason sent the Company the following proposed revision to the duration clause:

This Letter of Interpretation and Accommodation Agreement will remain in effect until December 31, 2012, and, upon mutual agreement o [sic] the parties, will continue in effect thereafter subject to such amendments and modifications as maybe agreed to in conference at the request of either party. Either party may serve notice of its desire for such conference upon the other party no earlier than October 31, 2012.

(Joint Exhibit 4.)

On February 8, 2012, Delhommeau emailed Gleason a revised draft of the RUL in which he rejected Gleason's proposed changes to the duration clause and reverted to the Company's original January 30 proposal, with the exception that "Letter of Agreement" was shortened to "Letter." (Joint Exhibit 5.) Thereafter, the parties exchanged additional drafts of the RUL; however, the Union did not propose additional revisions to the duration clause and that clause remained unchanged. Paragraph 5 of

the final version of the RUL is identical to the language proposed by the Company on February 8, 2012, and reads as follows:

This Letter will remain in effect until December 31, 2012, and will continue in effect thereafter subject to such amendments and modifications as may be agreed to in conference at the request of either party. Either party may serve notice of its desire for such conference upon the other party no earlier than October 31, 2012.

(Joint Exhibit 10.)

Gleason testified at the hearing that he understood Paragraph 5 to mean that the RUL would expire by its own terms no later than December 31, 2012. He further testified that the second half of the first sentence of Paragraph 5 meant only that the parties could extend the Letter upon their affirmative mutual agreement. He stated that the intent of the second sentence was to give both parties the opportunity to affirmatively trigger the process of negotiating to extend the Letter beyond the December 31, 2012 expiration date.

The parties executed the RUL on March 19, 2012. Among its other terms, the parties agreed to the following provisions, which became Paragraphs 2 and 3 of the Letter, respectively:

The allocation of work and utilization of manpower as provided under this Letter to accommodate the redeployment of Company aircraft, facilities and equipment will not result in any involuntary relocation, involuntary reduction-in-force, or reduction in the status or pay of active Mechanics and Related Employees throughout the new United system for the duration of this Letter.

The terms and obligations set forth in paragraph 2 of this Letter shall not apply under the following: an ongoing labor dispute; grounding or repossession of a substantial number of the Company's aircraft by a government agency or a court order; loss or destruction of the Company's aircraft; involuntary reduction in flying operations due to either governmental action(s)/requirement(s) or to a decrease in available fuel supply or other critical materials for the Company's operation; revocation

of the Company's operating certificate(s); war emergency; a terrorist act; or a substantial delay in the delivery of aircraft scheduled for delivery – provided that the exception(s) (as defined above) relied upon by the Company to avoid the terms and obligations set forth in paragraph 2 of this Letter has (have) a material and substantial impact on the Company.

(Joint Exhibit 10.) Gleason testified that it was the Union's understanding that the provision excluding situations involving an "ongoing labor dispute" from the application of the RUL would cause its automatic termination in the event of any labor dispute, including a formal request for mediation with the National Mediation Board ("NMB"). Gleason explained that if the Company "pulls the plug and we're no longer doing direct negotiations, and you go to the agency, which can take forever and a day by the time you're done with mediation, to get an agreement, that this [RUL] was no longer going to apply or going to be in effect." (Tr. I p. 87.)

On March 19, 2012, the same day the parties executed the RUL, Bob Fisher, an IBT International Representative, emailed Delhommeau a copy of the communication he was preparing to send to the Union's chief stewards announcing the parties' agreement on the RUL. The communication stated that the RUL "ends on December 31, 2012 unless the parties mutually agree to continue it." (Union Exhibit 5.) Delhommeau emailed back to Fisher, "Looks ok. I don't have the letter in front of me, but I believe Dec. 31, '12 date the parties have to agree to modify or end the [RUL]." (*Id.*) Later that month, the Union sent the communication out to its membership. The communication stated that the parties had entered into an agreement regarding the cross-utilization of mechanics, but "the agreement remains in effect only through December 31, 2012 unless the parties mutually agree to extend it." (Union Exhibit 3.)

The parties subsequently met in May 2012 to explore the possibility of concluding a joint CBA by the end of the year via expedited facilitated bargaining. At the meeting, Fisher and Doug McKeen, the Company's Senior Vice President for Labor Relations, discussed the duration of the RUL. Fisher testified that McKeen stated that the December 31, 2012 deadline would serve as a "hard stop" that would force the parties to finish their negotiations by that date. (Tr II p. 16.) McKeen testified that he could not recall using the phrase "hard stop" in his conversation with Fisher, but stated that "Bob Fisher is a man of integrity and if he believes that I used that phrase, I probably used that phrase." (Tr. II pp. 130-31.) However, McKeen also testified that there was never any discussion of the RUL at the May 2012 meeting, and that any references to December 31, 2012 were in the context of targeting completion of a joint CBA by means of a proposed alternative expedited process.

The parties were unable to complete a joint CBA by the end of 2012 and commenced an expedited facilitated bargaining process in January 2013. At a January 9, 2013 executive session, Delhommeau testified that Gleason stated to him and McKeen that "we had to look at how to re-up the resource utilization letter," which the Company interpreted to mean that Gleason believed that the RUL needed to be renewed. (Tr. III p. 117.) He further testified that he and McKeen responded that the RUL did not require a "re-up" and that both sides should review the Letter's language. Delhommeau stated that, at an executive session a few weeks later, he asked Gleason whether he had reviewed the RUL and Gleason responded that the Company was right in that it did not require a "re-up." (Tr. III p. 120.) When questioned following

Delhommeau's testimony, however, Gleason testified that he never agreed with the Company's position that the RUL did not expire on December 31, 2012.

The expedited facilitated bargaining process broke down later that year. In a November 7, 2013 letter, McKeen informed the Union that the Company had determined that the process was no longer productive and that it was taking the required action to terminate the process. On that same date, the Company filed an application for mediation with the NMB under Railway Labor Act Section 5.

## **POSITIONS OF THE PARTIES**

### **The Union's Position**

The Union argues that both the plain language of the RUL and the parties' bargaining history confirms that the RUL automatically expired on December 31, 2012. It asserts that the first clause of the first sentence of Paragraph 5, i.e., "This letter will remain in effect until December 31, 2012," serves as the "general rule" providing that the RUL terminates on December 31, 2012. (Union Brief p. 13.) The second clause of the same sentence spells out the steps that the parties must affirmatively take in order to extend the RUL's terms beyond December 31, 2012. The Union contends that the second and last sentence of Paragraph 5 provides the "means and procedure" for invoking the conference by which the parties could agree to extend the termination date of the RUL. (Union Brief p. 14.) In sum, Paragraph 5 provides that the RUL expires on December 31, 2012 unless either party takes affirmative action to extend or modify it. The Union argues that, since the parties did not agree to extend the RUL, it accordingly expired on December 31, 2012.

The Union contends that the parties' bargaining history supports its interpretation of Paragraph 5. Notwithstanding the incorporation of several changes to the draft RUL before it was finalized, there was a basic accord between the parties that the RUL would "expire via its own terms unless the parties entered into a separate agreement providing otherwise," which remained intact. (Union Brief p. 10.) It argues that both parties to the RUL negotiations understood that it was a temporary solution that was necessary only until the amalgamation of the collective bargaining agreements was completed. The parties agreed to a target date of December 31, 2012 for completing these negotiations. Therefore, the parties set the terms of the RUL to expire on that date.

The parties' understanding as to the temporary nature of the RUL was also corroborated by the testimony of both parties' witnesses, according to the Union. Fisher testified that the Union's understanding at the conclusion of RUL negotiations, which it memorialized in a March 19, 2012 email to Delhommeau, was that its terms would be subject to a "hard stop" as of December 31, 2012. (Union Brief, p. 17.) The Union asserts that Delhommeau "failed to contest" Fisher's statement and did not object to the subsequent mention of the characterization of the RUL's termination date to the Union's chief stewards. (*Id.*) In fact, the Company did not object to the Union's characterization of the RUL's expiration date until the arbitration hearing. This failure to raise an objection for such a long period confirms that the Company similarly understood that the RUL would expire on December 31, 2012.

The Union argues that Fisher's conversation with McKeen subsequent to the execution of the RUL lends additional support to its argument that the parties intended

the terms of the RUL to be subject to a “hard stop” on December 31, 2012. Fisher testified that during a May 2012 meeting, the parties discussed what issues would need to be resolved to complete the joint CBA by December 31, 2012. At the meeting, according to Fisher, McKeen described December 31, 2012 as a “hard stop” that would serve as a motive to force the parties to complete their negotiations over the new collective bargaining agreement’s terms by that date.

The Union asserts that, notwithstanding the evidence that the RUL terminated on December 31, 2012, the RUL became otherwise null and void when the Company subsequently petitioned the NMB for formal mediation on November 7, 2013. According to the Union, this action triggered the termination language in Paragraph 3 of the RUL, rendering the remainder of the Letter inoperative. Gleason testified that in reaching an agreement on Paragraphs 2 and 3, the parties agreed that if the Company ended negotiations by requesting the NMB’s assistance, the terms of the RUL would be without effect. The Union notes that Gleason explained that the rationale for this agreement was that formal mediation can take an exceedingly long time and the parties did not want to maintain the RUL’s terms in effect for such an uncertain and lengthy period.

### **The Company’s Position**

The Company contends that Paragraph 5 of the RUL is clear that December 31, 2012 is not an expiration date or a “green-light” date for either party to unilaterally terminate the Letter. (Company Brief p. 27.) Rather, it states the opposite. That is, the terms provide that the RUL “will remain in effect until December 31, 2012, and will

continue in effect thereafter,” subject only to modifications and amendments agreed to by the parties pursuant to a conference request. (*Id.*) The Company asserts that Paragraph 5 is a “garden variety” duration clause that is found in nearly every airline industry contract. (Company Brief p. 28.)

Moreover, that December 31, 2012 is not an expiration date but rather an amendable date intended to serve as a bridge to the final, amalgamated CBA is further confirmed by reading the RUL in the context of LOA 28 of the Sub-United CBA, asserts the Company. It notes that, on its face, the RUL effectuates LOA 28, which is entitled “Resource Utilization During Transition Before Final Amalgamation,” and that this concept – that the RUL serves as a bridge to the parties’ amalgamated CBA -- is “irreconcilable” with the notion that the RUL expired by its terms on December 31, 2012 or can be unilaterally terminated. (Company Brief p. 29.) Indeed, if the parties intended to allow a unilateral termination of the RUL, the Company argues, it knew how to negotiate that language.

The Company further argues that the parties’ bargaining history and conduct following the execution of the RUL confirm that Paragraph 5 means what it says. During the drafting process, the Company rejected the Union’s proposed revision to Paragraph 5 in which the Union added the phrase “upon mutual agreement of the parties,” to indicate that the RUL would only continue after December 31, 2012 if both parties agreed to the same. The draft language thereafter reverted to the Company’s original proposed duration clause and remained unchanged in the final version. The Company asserts that, by arguing that Paragraph 5 should be read as though the parties adopted the Union’s proposed revision, the Union is seeking through arbitration

what it could not obtain through negotiation. It further maintains that its interpretation of Paragraph 5 is the only one that effectuates the contract language and the stated objectives of both parties in entering into LOA 28 and the RUL.

The Company argues that the March 19, 2012 email exchange between Fisher and Delhommeau regarding the Union's draft announcement of the RUL to its members, which stated that the Letter ends on December 31, 2012 unless the parties mutually agree to extend it, is also unavailing. Delhommeau "politely" told Fisher that the draft "looks OK" while also pointing out his belief that the parties have to agree to modify or end the RUL after December 31, 2012. (Company Brief p. 36.) Thus, the Company contends, the email exchange confirms the Company's contemporaneous understanding that the parties have to agree to modify or end the RUL. Regardless, the Company argues, what the Union represented to its members is immaterial and non-probative of the parties' intent in negotiating Paragraph 5.

The parties' conduct following the execution of the RUL similarly confirms that the Letter did not expire or become unilaterally terminable on December 31, 2012, according to the Company. During the discussions resulting in the October 24, 2012 on-the-job training Memorandum of Understanding ("OJT MOU"), the parties did not reference that the RUL would supposedly expire on December 31, 2012. The Company asserts that this silence on the Union's part indicates that the parties agreed that this was not the RUL's expiration date. Similarly, during the meetings leading up to the Protocol Agreement and expedited bargaining, the RUL was never mentioned. Moreover, any discussion of a stop date in those meetings concerned a target for concluding the expedited process that was unrelated to the RUL.

The Company points out that even after the December 31, 2012 date passed, both parties continued to recognize the RUL as being in full force and effect. It asserts that when the Union queried whether the RUL needed to be “re-upped in early January 2013,” both parties reviewed its terms and agreed that it did not. (Company Brief p. 41.) The Company notes that even the Union’s November 9, 2013 letter seeking to “terminate” the RUL contradicts its own argument that the RUL expired on December 31, 2012 or was vitiated by the RUL’s Paragraph 3 (the “force majeure” clause). (*Id.*)

The Union’s argument that the RUL’s force majeure clause was triggered by the Company’s application for NMB mediation is also meritless, the Company argues. It maintains that the force majeure clause is a common airline industry provision that is nearly identical to those in the Sub-CAL and Sub-United CBAs.

### **DISCUSSION**

The issue before the Board is whether the RUL remains in effect. Both parties rely on the plain language of the Letter, their bargaining history, and their conduct subsequent to the Letter’s execution to reach opposite conclusions. The Union maintains that the RUL expired by its terms on December 31, 2012 but that, notwithstanding this fact, it became null and void when the Company applied for mediation with the NMB on November 7, 2013. In contrast, the Company argues that the RUL did not expire on December 31, 2012 or on November 7, 2013 and remains in effect.

We first address the issue of whether the RUL expired on December 31, 2012. After studying the testimony of the witnesses who were involved in the RUL negotiation

process, as well as proposals exchanged during bargaining, notes taken during the negotiation sessions, and each side's internal communications, the Board is convinced that there was no "meeting of the minds" between the parties regarding the application of Paragraph 5.

Both parties had a good faith, albeit different, belief regarding the meaning of Paragraph 5 of the RUL. As Union counsel Gleason explained, the Union left the January 27, 2012 negotiation session with the understanding that the RUL would provide "breathing room" to the parties for a finite time period, which would end on December 31, 2012, because that was the date by which the parties had determined that they could complete an amalgamated CBA. That the Union held this interpretation of Paragraph 5 is reinforced by its circulation of a Merger Update to its members shortly after the parties executed the RUL. The Update informed Union members that the RUL "remains in effect only through December 31, 2012 unless the parties mutually agree to extend it." However, the record reflects that the Company understood the terms of Paragraph 5 to mean that the RUL became amendable on December 31, 2012, but did not terminate on that date. In short, there was a true misunderstanding between the parties on the meaning of Paragraph 5 that must now be resolved.

Thus, in situations such as the instant one, the Board must serve as "reader of the contract." If the contract language is found to be clear and unambiguous, one must conclude that the plain meaning of the words themselves is the best evidence of what was intended when the language was incorporated into the parties' agreement.

The initial inquiry, therefore, needs to focus on the relevant language contained in the RUL. Paragraph 5 of the RUL provides:

This Letter will remain in effect until December 31, 2012, and will continue in effect thereafter subject to such amendments and modifications as may be agreed to in conference at the request of either party. Either party may serve notice of its desire for such conference upon the other party no earlier than October 31, 2012.

The language of Paragraph 5 states, in no uncertain terms, that the Letter “will remain in effect until December 31, 2012, **and will continue in effect thereafter** subject to such amendments and modifications as may be agreed to in conference at the request of either party.” (Emphasis added.) Thus, the parties agreed that the RUL would continue in effect after December 31, 2012 subject to any mutually agreed upon changes. This language is not susceptible to differing interpretations. Logically, it can only be interpreted in one manner, i.e., that the Letter continues past December 31, 2012 unless there is a subsequent mutual agreement to terminate it. Otherwise, the clear and unambiguous language stating that, subsequent to December 31, 2012, the RUL “will continue in effect” would have no meaning.

The second sentence of Paragraph 5 is also clear and unambiguous in that it provides a time frame for seeking the conference referenced in the preceding sentence. Indeed, similarly constructed duration clauses have been read in this exact way by the federal appellate court. See, e.g., *EEOC v. United Air Lines, Inc.*, 755 F.2d 94, 97, 99 (7<sup>th</sup> Cir. 1985) (interpreting the contractual clause, “shall remain in full force and effect through November 1, 1978, and thereafter shall be subject to change by service of notice as provided for in Section 6,” to mean that “November 1 really isn’t a termination date at all; it is the date before which no changes can be made. There is a difference between providing that a contract shall lapse at a given date and that after that date it shall be subject to amendment in accordance with specific procedures.”)

Additional support for this conclusion is found in the parties' bargaining history. In its original draft of the RUL, the Company proposed that the first sentence of what would become Paragraph 5 should state: "This Letter of Agreement will remain in effect until December 31, 2012, and will continue in effect thereafter subject to such amendments and modifications as may be agreed to in conference at the request of either party." The Union, in its February 6, 2012 proposed draft of the RUL, added language to Paragraph 5 to state that the Letter "will remain in effect until December 31, 2012, and upon mutual agreement of the parties, will continue in affect thereafter . . . ." The intent of this revision was to ensure that the Letter would terminate on December 31, 2012 unless the parties mutually agreed to continue its terms. However, on February 8, 2012, the Company sent the Union another proposal striking the clause "upon mutual agreement of the parties," so that Paragraph 5 reverted back to the original terms proposed by the Company. The evidence reflects that in subsequent drafts, the Union never challenged the Company's striking of that clause nor did it propose additional revisions to Paragraph 5. The Company's proposed Paragraph 5 language remained in the final version of the RUL that was executed on March 19, 2012. Here, the Union's silence following its receipt of the Company's February 8 revisions must be interpreted as acquiescence.

The parties' exchanges on the subject of Paragraph 5 – both before and after the RUL's execution -- do not convince us otherwise. First, the fact that both parties expressed a desire and intention to complete an amalgamated CBA by the end of 2012 is not dispositive of the outcome advanced by the Union. That is, while the parties worked towards that goal, the evidence does not support a claim that the RUL was

crafted to expire on December 31, 2012. Indeed, setting a firm termination date would conflict with the parties' intent in entering into the RUL – that is, to provide for the utilization of employees during the transition period prior to the ratification of an amalgamated CBA. Second, the Union's contention that Delhommeau did not strongly object to Fisher's letter to the Union membership stating that the RUL would terminate on December 31, 2012 unless the parties agreed to continue is unavailing. In point of fact, in his response email, Delhommeau corrected Fisher's representation by writing that he believed the parties have to agree to terminate or modify the RUL. Thus, the Union was on notice that the Company did not have the same view on when the RUL terminated.

Finally, the Union's argument that McKeen told Fisher in May 2012 that December 31, 2012 would serve as a "hard stop," is similarly unpersuasive. McKeen did not deny making the statement, but testified that he did not recall having made it in reference to the RUL. When he used the term "hard stop" to refer to December 31, 2012, he was referring to the date that parties used for expedited negotiations.

In summary, even accepting all the Union's assertions, it would not overcome the clear and unambiguous language of Paragraph 5 and the undisputed bargaining history of that language. Accordingly, the Board finds that the evidence does not support the Union's position that the RUL terminated on December 31, 2012.

In view of our finding that the RUL did not expire on December 31, 2012, we must now examine whether the Letter was subsequently terminated when the Company elected to seek mediation assistance from NMB, or remains in effect. The Union argues that the Company's November 7, 2013 mediation request triggered the "ongoing labor

dispute” exception in Paragraph 3 of the RUL, resulting in the Letter’s nullification.

Paragraph 3 provides:

The terms and obligations set forth in paragraph 2 of this Letter shall not apply under the following: an ongoing labor dispute; grounding or repossession of a substantial number of the Company’s aircraft by a government agency or a court order; loss or destruction of the Company’s aircraft; involuntary reduction in flying operations due to either governmental action(s)/requirement(s) or to a decrease in available fuel supply or other critical materials for the Company’s operation; revocation of the Company’s operating certificate(s); war emergency; a terrorist act; or a substantial delay in the delivery of aircraft scheduled for delivery – provided that the exception(s) (as defined above) relied upon by the Company to avoid the terms and obligations set forth in paragraph 2 of this Letter has (have) a material and substantial impact on the Company.

Paragraph 2 of the RUL states:

The allocation of work and utilization of manpower as provided under this Letter to accommodate the redeployment of Company aircraft, facilities and equipment will not result in any involuntary relocation, involuntary reduction-in-force, or reduction in the status or pay of active Mechanics and Related Employees throughout the new United system for the duration of this Letter.

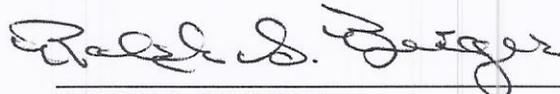
Paragraph 3 provides that the exceptions listed must have a “material and substantial impact on the Company.” The Union has not presented evidence, nor do we find any in the record, to support the proposition that simply filing for mediation with the NMB rises to the level of an “an ongoing labor dispute” sufficient to trigger the termination of the RUL. As the Company points out, the exceptions set forth in Paragraph 3 are all conditions affecting the Company’s ability to operate the airline in a routine fashion. The notion that filing an application for mediation qualifies as an “ongoing labor dispute” sufficient to terminate the RUL belies the reality that the Company continued to operate in a normal fashion following its filing for mediation. Thus, the Board finds insufficient support for the Union’s argument that the Company’s

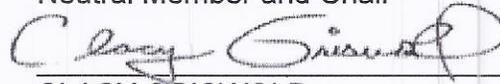
application for mediation services triggered Paragraph 3 of the RUL. We therefore conclude that the RUL did not terminate upon the Company's filing for mediation with the NMB and that it continues to remain in effect.

Therefore, based on the record before it, and for the reasons stated hereinabove,  
the Board renders the following

**AWARD:**

The grievance is denied. The RUL did not expire by its own terms on December 31, 2012 or upon the Company's November 7, 2013 request to the National Mediation Board for formal mediation, and remains in effect.

  
12/7/15  
Date  
RALPH S. BERGER  
Neutral Member and Chair

  
12/11/15  
Date  
CLACY GRISWOLD  
Union Member  
( ) Concur (X) Dissent

  
12/8/15  
Date  
DIXON MCKENZIE  
Company Member  
(X) Concur ( ) Dissent

I, Arbitrator RALPH S. BERGER, do hereby affirm that I am the individual described in and who executed this instrument, which is the System Board of Adjustment's Opinion and Award.

Dated: December 7, 2015  
Brooklyn, New York

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RALPH S. BERGER, ESQ.  
Neutral Member and Chair