

ARBITRATION PROCEEDINGS
AIR LINE PILOTS' ASSOCIATION MERGER POLICY

**In the Matter of the Seniority Integration
Arbitration Between**

THE PILOTS OF CONTINENTAL AIRLINES

- And -

THE PILOTS OF UNITED AIR LINES

ARBITRATION BOARD

Dana Edward Eischen
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Appearances

For the Continental Pilot Merger Committee: KATZ & RANZMAN, PLLC
By Daniel M. Katz
Gregory R. Shoemaker
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For the United Pilot Merger Committee: BREDHOFF & KAISER, PLLC
By: Jeffrey R. Freund
Roger Pollack
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Also Present

CAL Pilot Merger Committee

Captain Jim Brucia, Chair
Captain Scott Butcher
Captain Tony Montalto
First Officer Neal Schwartz

UAL Pilot Merger Committee

First Officer Jeffrey Ruark , Chair
Captain William Bales
Captain Stephen Gillen
First Officer Dan Madruga

I. PRELIMINARY STATEMENT

These proceedings arise out of the May 3, 2010 announcement that Continental Airlines Inc. (“Continental” or “CAL”) and United Air Lines Inc. (“United” or UAL”) agreed to merge. At all times pertinent to this case, pilots employed by each constituent carrier and by the merged carrier have been and are represented by the Air Line Pilots Association, International (“ALPA” or “Association”), under terms and conditions of employment set forth in various collective bargaining agreements between ALPA and the respective carriers. This arbitration was conducted in accordance with the currently controlling ALPA Merger Policy and several related agreements by and between the CAL Master Executive Committee (“CAL MEC”) and the UAL Master Executive Committee (“UAL MEC”), accepted and approved by ALPA. (See Appendix 1, attached).

Evidentiary hearings were held in Washington, D.C. during April, May and June, at which the respective Committees were represented by Counsel and offered full opportunity to submit oral and documentary evidence, including direct testimony and expert opinions, all subject to cross-examination and rebuttal. The evidentiary record was closed following receipt of the stenographic transcript and post-hearing briefs dated July 19, 2013. Thereafter, the Arbitration Board convened in Executive Session and, after careful consideration of the record and extensive consultation, we render this Opinion and Award. The Technical Assistance Team created jointly by the Committees provided this Board with expert technological help by running numerous calculations at our direction and verifying the mathematical accuracy of the output. We express our sincere gratitude for that invaluable assistance but emphasize that the role of TAT was limited only to those described calculations.

II. CONTINENTAL AND UNITED AIR LINES PRE-MERGER SITUATION

A. ECONOMIC BACKGROUND

1. Continental Airlines

Continental Airlines dates its beginning to 1934, when Walter Varney began operating Varney Speed Lines. (Coincidentally, in 1926 Varney began the airline that would eventually become United Air Lines.) It adopted the Continental name two years later. In 1953, Continental began merging with other airlines, on the way to becoming the large enterprise it was at the time of the merger. By the middle of the 20th Century, Continental was one of the more innovative airlines in the country. In 1959, it began America's first commercial jet transport. In the 1960s, it created a subsidiary in Southeast Asia that morphed into Air Micronesia, from which Continental services the mid-Pacific from its base in Guam.

Deregulation in 1978 forced Continental, like all other airlines, to adjust its business strategy. The newly competitive industry and other factors forced Continental into Chapter 9 bankruptcy in 1983, and that in turn spawned a strike. The strike ended in 1985, but Continental remained in bankruptcy for another year. Even during that rocky period, however, it continued to grow.

In April of 1985, it began nonstop service to Europe from Newark and Houston. After emerging from bankruptcy in 1986, Continental was able to make significant acquisitions. Its parent company bought People Express and the assets of what was then Frontier Airlines. Those airlines, plus New York Air, Rocky Mountain, and Britt

began operating under the Continental and Continental Express names, thus establishing a larger and more widespread brand. In 1988, Continental began serving Tokyo from Seattle and later formed the first Global Alliance with Scandinavian Airline Systems. Acquisitions continued in the 1990s, with Continental gaining majority shares in Bar Harbor Airways and Texas Air.

Size did not guarantee profitability. In December 1990, Continental again filed for bankruptcy, this time under Chapter 11, from which it did not emerge until April 1993.

The events of September 11, 2001 upended the entire domestic airline industry. Like others, CAL furloughed pilots for several years. Compared to some other airlines, Continental did relatively well financially, enough so that it was able to contribute \$372 million to its defined benefit pension plan at the end of 2003. It also continued to expand its international alliances, notably by joining Sky Team in 2004. Nevertheless, CAL's economic situation deteriorated as the decade went on. While some other airlines went into bankruptcy, CAL took other important steps in 2004 and 2005 to maximize revenue and minimize costs.

The beginning of the Great Recession in 2008 hurt the entire airline industry. Unlike many other airlines, though, Continental managed to avoid the necessity of another bankruptcy. It did have to furlough 148 pilots in September 2008 but they were back at work just over two years later. More importantly, from 1Q2009 to 3Q2010, it lost \$1.468 billion while its competitors, including United, were making money.

After considering but ultimately rejecting earlier merger possibilities, Continental realized that long-term survival required that it join with another airline. That business

plan brought it to the merger that is the subject of this case.

2. United Air Lines

United Airlines began operation early in the 20th Century, also founded by Walter Varney. In 1959, United started flying DC-8 jets and initiated international jet service from Seattle to Tokyo in 1983, after succeeding to Pan American's "Fifth Freedom Rights."

In 1989, United's pilots started efforts to purchase UAL. In 1994, the pilots swapped 15-25% of their salaries for ownership in United, which resulted in 55% of the company's stock. In the 2002 round of bargaining, United unsuccessfully tried to avert bankruptcy by obtaining \$2.2 billion in employee concessions over a number of years. With the resulting bankruptcy, the pilots' stock became worthless. United filed for bankruptcy under Chapter 11 on December 9, 2002, from which it emerged on February 1, 2006; thereby ending the longest bankruptcy in airline history.

The September 11, 2001 attacks had a devastating impact upon all airlines, including United. UAL furloughed 2,172 pilots and many remained on furlough for years-- some to the present day. For most of the rest of the "decade of the aughts", the airline struggled to make money. A tentative recovery in the middle of the decade, when it made profits of about \$1.4 billion in 2006 and 2007, was squashed by the recession of 2008. In 2008 and 2009, United again furloughed pilots, including some who had been recalled after the 2001 furloughs. UAL recovered swiftly, however, and earned about a billion and a half dollars from 1Q2009 to 3Q2010.

Earlier than many airlines, United realized that consolidation and reduction of capacity were essential to the airline industry's stability and profitability, a conclusion

undoubtedly prompted by United's experiences after 9/11 and in 2008. United therefore began early to prepare the airline for an anticipated merger primarily by strengthening its financial reserves and postponing major fleet augmentations until it knew what a merged airline would require. United made a conscious business decision to shrink in order to make money, shrinking its fleet size dramatically from 2000 to October 1, 2010. United had approximately 610 aircraft in operation in 2000 and only 359 in 2010, a reduction of over 40%. It aggressively sought merger opportunities and finally found a satisfactory partner in Continental.

3. Global Alliances and Hubs

After deregulation, the need for international relationships became apparent to both airlines. Both therefore joined global alliances; United was the founder of the Star Alliance and Continental partnered with SKY Team in 2004.

Both airlines had numerous hubs, each serving separate regions with distinct missions. Continental's hubs were Cleveland, Newark, Houston, and Guam; with Newark (ECW) the central point for its European service. The Houston hub served the same function for its Caribbean, Mexico, and Latin America service. Guam's main role was as a hub for Air Micronesia's operations throughout the Pacific Rim and into Asia. United provided international service from hubs in San Francisco, Los Angeles, Denver, Washington, and Chicago but Chicago was by far United's main hub.

4. The Decisions to Merge

As these historical sketches show, both airlines survived rocky patches but each concluded, for somewhat different but good reasons, that they needed merge to grow and survive. While each party to this case argued for tactical reasons that it had a

decent future as a stand-alone airline and thus did not *need* the other, the evidence shows otherwise. Indeed, their respective CEOs viewed their companies' situations realistically and stated frankly that each needed the other to ensure their long-term profitability and even survival.

The relative value of the airlines is difficult to calculate with precision. According to investment banks like Goldman Sachs and JP Morgan Chase, the airlines' joint proxy statement credited United shareholders with 55% of the merged value and Continental shareholders with 45%. Unlike some airline mergers and many airline acquisitions, this was not a case of one strong entity swallowing a much weaker one. It was, rather, a case of two solid but troubled entities combining for mutual advantage.

B. ECONOMIC STATUS AND PROSPECTS AT MERGER CLOSING DATE

A full evaluation of an airline's economic status involves consideration of many components, among them its strength and profitability in its various markets, the number of block hours and the related need for pilots, fleet composition, route and hub structure, and more. The crudest but perhaps most revealing measure, though, is profitability.

1. Financial Status

Looking first at that broad standard, the airlines were on markedly different courses. By most measures, Continental did better than United during the decade leading up to the 2010 merger, during which it made about \$1 billion while United lost \$7.8 billion. That decade was a period of upheaval and recalibration for the industry. Most legacy carriers, nibbled by domestic competition from low-cost airlines, realized

that they had to put more of their resources to work in higher-yield international flying. CAL was well positioned to do so because of its existing routes and its aircraft fleet. CAL accordingly decreased its domestic capacity, although by less than the industry as a whole and substantially less than UAL.

Continental's uniquely structured short haul international operations made substantial profits during that period, more than UAL's. That was true for most of this period in every Continental international division, Atlantic, Latin America, and Pacific, although not in domestic service. Continental's performance in the year or two immediately before the merger, however, was much weaker. From 1Q2009 through 3Q2010, it made an operating profit of just \$513 million, far less than United. In short, its long-term prospects as a stand-alone airline were clouded at best.

United's pattern during the first ten years of the 21st century was almost the reverse of Continental's. While it lost \$7.8 billion during the entire decade, most of that loss was in the early part. United's fortunes started to turn around in 2006 and 2007, when its profits totaled approximately \$1.4 billion. Like the rest of the industry, it suffered with the recession in 2008, losing \$1.746 billion that year. In the seven quarters immediately before the merger, however, it again turned profitable, making a profit of approximately \$1.5 billion, almost three times the size of Continental's profit during the same period.

2. Fleet Composition

On the Merger Announcement Date ("MAD"), Continental had a total of 335 aircraft, of which just 20 were wide-body B777-200ERs. The rest included 26 B767s, 62 B757s, and 227 in the B737 family. In addition, Continental had firm orders for three

more B777s, two to be delivered in 2010, one in 2012 or later, and options for four more to be delivered in 2012 or later.

On Merger Closing Date ("MCD"), the fleet composition data was different. According to Captain Spence Kershaw's Exhibit D1, p. 2, Continental had 349 aircraft on that date, including 22 B777s, 26 B767s, 62 B757s, and 239 B737s. It had firm orders for 75 planes (49 B737NGs, one B777, and 25 B787s) and options for another 98 (59 B737NGs, four B777s, and 35 B787s). Again, some of those orders and options were replacement aircraft, particularly the 737NGs.

United's 359 aircraft fleet at the MCD included 24 B747s, 52 B777s, 35 B767s, 96 B757s, 97 A320s and 55 A319s. Two-thirds of United's fleet were domestic-only aircraft. Thus, it had 136 wide-body planes, which included 76 jumbo aircraft, compared to Continental's 22. United believed with much of the rest of the industry in 2010 that wide-body aircraft are essential for the long haul international routes to maintain a global presence.

While Continental had purchased additional planes and ordered even more prior to MCD, United had not. (After the merger, United ordered 25 B787s and 25 A350s for delivery in 2016. However, these planes were considered replacement aircraft rather than new planes.) Once it became apparent that the industry was reducing capacity and that mergers were likely, UAL made a tactical decision to conserve cash and not purchase new planes until it knew whether and with whom it would merge.

CAL placed a different bet to make itself more attractive to potential suitors. It decided to modernize and expand its fleet. Among other things, it added winglets to its 757-200s to extend their long-haul range, and fitted them to obtain the ETOPS

certification that made trans-Atlantic flying possible. Thus, by the time of the merger, CAL's fleet was several years younger than UAL's, more fuel efficient, and technologically more advanced. That was a result of different but equally defensible strategic choices, not because of one airline's weakness.

3. Pilot Staffing

Block hours drive pilot numbers: the more hours an airline's planes fly, the more pilots it will need. Starting at the beginning of the decade in year 2000, United pilots flew considerably more block hours than Continental pilots. In 2000, United pilots flew 62% of the block hours. That figure gradually decreased and at the time of the merger, United flew 52% of the block hours compared to 48% for Continental with fewer pilots. As of the MCD, United captains averaged 49.4 block hours per month, while Continental pilots averaged 54 hours of block time per month.

On October 1, 2010, United had 7,699 pilots, of which 6,254 (81%) were active and 1,445 (19%) were furloughed. Of the active pilots, 2,575 were captains and 3,679 were first officers. On the same date, Continental had 2,067 captains and 2,571 first officers, a total active pilot count of 4,638. (Continental had a smaller percentage of first officers than United because United's loner international flying required more augmentation. UAL's first officers on average were older and more senior.) About 148 Continental pilots were on furlough at the MCD, although they were recalled within a few months.

It is also appropriate to consider mutual gains that flow from the merger. On a stand-alone basis, United Pilot hourly wage earnings were less than their counterparts at Continental. By contrast, the work rules and various elements of non-wage

compensation of United Pilots were superior to those at Continental. On balance, the compensation and working conditions of both groups were elevated by the rising tide of the of the new Joint Collective Bargaining Agreement (“United Pilot Agreement” or “JCBA”), signed December 18, 2012 and amendable January 31, 2017 (Joint Exhibit 7).

4. Conclusions

The parties' documentary and testimonial evidence conclusively demonstrated that each airline had major strengths and serious limitations. Overall, neither was clearly superior to the other. After trying various strategies through the decade, each independently realized that its long-term profitability, if not its very survival, required merging with a partner whose strengths balanced its weaknesses. After feints in other directions, they concluded that this merger was the best available option. It became a marriage, if not quite of equals, at least of well-balanced partners who filled each other's gaps to form a new and stronger entity.

III. THE PARTIES' PROPOSALS

A. ALPA POLICY

Following Arbitrator Nicolau's decision in *US Airways and America West Airlines*, ALPA revised its merger policy. The current policy, dated April 9, 2009, in Part III, Section C.4.e., provides:

Factors to be considered in constructing a fair and equitable integrated seniority list, in no particular order and with no particular weight, shall include but not be limited to the following:

*Career expectations
Longevity
Status and category*

The most significant change in the policy, particularly in light of the decision that prompted the revision, was the express addition of “longevity.” We need not get into questions of what the committee members said during their deliberations. The words of the revised Merger Policy, when read in light of the context that gave rise to the change, plainly speak for themselves.

B. CONTINENTAL

The CAL proposal groups captains with captains and first officers with first officers. It omits category, treating all captains as fungible with all other captains, and all first officers as fungible with all other first officers, irrespective of which classification of aircraft they fly. It also excludes longevity (Tr. 1219-20), except indirectly in the sense that longevity has some bearing on a pilot’s rank on the unmerged seniority lists.

CAL’s proposal assumes that we will use the April 1, 2013 pilot lists. In constructing its first tranche of captains for the proposed ISL, for example, it uses the number 2,299. That number appears only on Continental Exhibit C-5, p. 1, the total of all Continental captains as of April 1, 2013. *See* Tr. 1153-54. Captain James Brucia, the Chairman of the CAL Merger Committee, explained the rationale for the CAL Committee’s proposed ISL build model as premised upon two primary foundations: an April 1, 2013 “snapshot date” and Continental System Bid 14-02, cross-referenced to the United Category Staffing Requirements for Vacancies, effective 5-31-2013, June bid month. *See* Tr. 1129-1196.

Captain Brucia described the CAL-proposed integration methodology as “Captains with Captains and First Officers with First Officers”. He then described in detail the complex assumptions that drove the numbers of Captains integrated and the

different ratios applied in two status-ranked tiers; below which the UAL furloughees were stapled at the bottom of the ISL, just above the constructive notice pilots. United obviously had many more pilots than CAL. To reach the proposed integer for a 1:1 ratio, CAL applies certain adjustments. First, CAL discounts *all* furloughed United pilots and focuses only on “active pilots”. The apparent reason for that adjustment is its belief that the none of the furloughed United pilots brought any meaningful “sweat equity” to he merger. That major discount brings the pilot count closer to CAL's preferred 2, 299. Next, CAL argues that United was “horrendously overstaffed,” meaning that it was carrying many more pilots than it really needed.

The overstaffing is shown, CAL argues, in the min/max parameters on bid 14-02, the April 2013 bid for February 2014 flying. LOA 26 of the JCBA requires posting of those parameters. In short, United did not “need” the allegedly excess active captains, so they should all be treated less favorably than captains from both airlines who are not “excess”. Captain Brucia’s calculations concluded that United had 609 more “bodies” than it needed (Tr. 1140, 1145, 1149). While his calculations are a bit difficult to follow and his numbers changed from time to time (Tr. 1140-53), he seems to have found that 291 of those bodies were captains (Tr. 1149-50). By deduction, that must mean that 318 were first officers.

Dropping those 291 “unneeded” captains further reduced the number of United captains to be considered for equal merger with all CAL captains, and thereby brought the respective captain counts closer to the 2,299 level for the 1:1 ratio. The CAL Committee used a different ratio to place the “excess” United captains with all of the respective first officers. Because United’s long-range international flying required more

augmentation than did Continental's, the CAL Committee's calculation of that differential augmented flying produced a ratio of 1000:944, United to Continental for the first officer tier of their proposed ISL (Tr. 1156-59, 1173). Rather than attempt further paraphrasing of Captain Bruscia's detailed and complex technical explanation of the CAL Committee's calculations, we will let his testimony speak for itself.¹ (See Appendix 2, attached)

According to CAL, the airlines are comparable as well in terms of fleet counts and block hours. Finally, CAL considers the earnings for the respective pilot groups, without consideration of aircraft size or type or whether the flying is long haul international or short haul domestic. On that basis, the CAL Committee argues that UAL pilots have already received "an earnings windfall" under the JCBA. It urges that CAL pilots deserve preference in constructing the 1:1 captain ratio and using the same differential means "[t]here is no need to subdivide the fleet into categories". CAL's post-hearing brief succinctly summarizes its list-building position:

The United pilots are clearly overstaffed. As Captains Butcher, Bruscia and Torrance explained, United brings more pilots to the merger than jobs. Attributing the same number of Captaincies to United as to Continental comports with the equivalent number of airplanes and block hours brought to the merger by the two sides. The merged carrier will allocate pilot positions through the joint contract, which will even out any pre-existing differences in staffing deriving from the pre-merger carriers' practices. Because each side brings the same number of aircraft and block hours to the merger, the merged list should allocate an equal number of Captaincy entitlement positions to each side.

Finally, the CAL proposal seeks to account for career expectations primarily by means of integral Conditions and Restrictions rather than in the list build model itself.

¹See Tr. 1129, Ln. 15-21; Tr. 1130, Ln. 13-22; Tr. 1131, Ln. 1-2, 20-22; Tr. 1133, Ln. 1-15; Tr. 1134, Ln. 1-5, 20-22; 1135, Ln. 1-14; Tr. 1150, Ln 3-14; Tr. 1154, Ln 3-14, 20-22; Tr. 1156. Ln. 3-5; Tr. 1156, Ln. 10-17; Tr. 1157, Ln 5-21; Tr. 1158, Ln. 1-22; Tr. 1159, Ln. 17-22; *See also* CAL Exhibits. G-1 thru G-8.

C. UNITED

UAL proposes a hybrid ISL build methodology that would combine two ALPA Merger Policy factors, Longevity and Status & Category, while protecting the third, Career Expectations, primarily through Conditions and Restrictions. The United team's proposal uses October 1, 2010, the MCD, as the "Snapshot Date" and the October 1, 2010 pre-merger seniority lists as the "Base Seniority Lists" for building its proposed ISL. It argues that the merger closing date best indicates the equities, jobs and fleet of each side at the beginning of the merger and avoids later changes introduced because of the merger. Additionally, United points out that the use of a snapshot date at or near the date of the merger is consistent with previous airline pilot integrations. Furthermore, it maintains that after October 1, 2010, all decisions were made by a single management entity. Therefore, it asserted that the snapshot date should not be April 1, 2013, two and a half years after a single management made decisions affecting all pilots.

Beginning with the October 1, 2010 snapshot date for purposes of assessing status and category and similarly using October 1, 2010 premerger seniority lists as "Base Seniority Lists", the UAL Committee model next drafts two separate integrated seniority lists:

1) A Longevity List, as of October 1, 2010 and

2) A Status & Category List, using seven groupings [The 7 groupings are: (1) 321/320/319FO, 737FO; (2) 767,757FO; (3) 747FO, 777FO, 787FO, 350FO; (4) 321/320/319CA/737CA; (5) 767/757CA; (6) 747CA, 777CA, 787CA, 350CA; (7) furloughees].²

The next steps combine the two lists, feathering the individual pilots by attributing

² The categories are formulated to match the aircraft and status groupings set forth in the "training freeze" provisions of Section 8-D-1-d of the JCBA, JX F.7, at 93, and an additional category for furloughees

equal weight to each factor (50% Status & Category/50% Longevity), thus producing the UAL Committee's proposed hybrid ISL. Finally, the UAL Committee proposes Conditions and Restrictions, which it maintains fairly and equitably protects for a reasonably limited period of time vested premerger career expectations of access to the most desirable flying by pilots from each airline.

Running the UAL Committee's longevity list required judgments about the proper longevity of several hundred CAL pilots, based upon circumstantial evidence from a number of premerger Continental databases rather than a single certified database. In contrast to the CAL team, which credits all of those pilots with regional subsidiary carrier flying they performed before and after their training dates for CAL mainline flying, the UAL team calculated presumed dates of hire/training at Continental mainline extrapolated from several Continental Management sources. The UAL Committee's stated objective was compliance with ALPA policy, which, it argues, provides that longevity must be determined by an employee's date of indoctrination training for the mainline airline, not before/after flying for a business partner regional airline. Thus, pilots who came to Continental mainline from a regional airline, apart from those whose seniority was merged by an ISL arbitration, were credited with longevity from the date they began training to fly mainline aircraft for the Continental mainline.

Crediting pilots only for time at Continental mainline and subtracting from their longevity time spent prior to commencement of mainline flying or under "flow-back" arrangements at subsidiary carriers required adjustments by the UAL Committee to the CAL Committee list. Continental Airlines advised the Committees that it did not possess

available records containing complete information of that sort in a single database. Therefore, the UAL team used an amalgam of data from the Zeus database for beginning training dates and data from the Continental defined benefit plan (“DBP”) to calculate longevity and furlough time for those pilots.

The UAL Committee concedes the CAL team's point that Zeus and the other sources are not perfect. Nevertheless, they maintain that cross-referencing the Zeus data with contemporary data points in the DBP and INDOC sources shows they generally agree and effectively corroborate conclusions drawn from the Zeus data. More importantly, contends UAL, these data plainly support the longevity distinctions it drew between flying for Continental mainline, *per se*, and flying in regional carrier subsidiary service.

Regarding the UAL pilots who are on furlough, United’s approach integrates these pilots with both the CAL pilots who were furloughed as of the Merger Closing Date and with active CAL pilots. The United proposal does not eliminate the longevity aspect of the ALPA merger policy as the CAL proposal does. It places UAL pilots with considerably more longevity along side of Cal pilots with less longevity. This is accomplished because United’s proposal incorporates status & category into their methodology. United claimed that to staple the 1445 furloughed UAL pilots at the bottom of the ISL is unfair and not in keeping with the mandates of the ALPA merger policy.

The UAL Committee's post-hearing brief concludes with these admonitions:

Airline mergers and the attendant pilot seniority integrations have proven to be the most stressful periods in an airline’s evolution. That stress manifests itself in a variety of ways that pose serious problems for the respective pilot groups and for ALPA as an institution. The expectations that competing integration proposals create in the minds of the merging pilot groups – and the hostility

engendered by these competing proposals – leave scars that do not heal well, if at all. . . . While there are surely many explanations for the tumult created by the SLI process, the leading culprit is the unrealistic expectations of many of the pilot groups. In our experience, those unrealistic expectations translate into extreme SLI proposals, and those extreme proposals are what allows the rhetoric and the animosity that flows from the fight over a scarce resource – a position on a combined seniority list – to spiral out of control. . . . When an Award fails to call out the fact that one side has made an entirely unreasonable proposal . . . that encourages, or fails to discourage, continuing unreasonable proposals; it also encourages the very conduct that inflames the SLI process and leads to the bitter recrimination that haunts the merged pilot group and ALPA for decades after. . . . [W]e urge in the strongest terms that [this Board] say so in its opinion, so that future merger committees will take this Board’s admonitions to heart and the damaging consequences of unreasonable posturing will be eliminated or at least minimized in future mergers.

IV. ANALYSIS

A. THE APRIL 2009 REVISED ALPA MERGER POLICY

The “legal” framework in which the Board must carry out its responsibility is, of course, the April 2009 ALPA Merger Policy which, like its predecessors, requires the Board to construct a “fair and equitable” ISL. The evolution of ALPA Merger Policy including, most importantly, the modifications following George Nicolau’s Award in the *America West-US Airways* case, is central to the resolution of this case.

That Award, by an experienced impartial arbitrator, was plainly based on the facts in that case record and the terms of the Merger Policy then in effect (but now changed). However, the pushback and uproar created an environment that was ultimately highly detrimental to ALPA and, unhappily, for the America West and US Airways pilots. *See generally* Jeff Bailey, *Pilots’ Battles Over Seniority Play Havoc With Airline Mergers*, N.Y. TIMES, Feb. 27, 2008. Even as they discuss merging with American Airlines, pilots from US Airways’ “East” and “West” groups are still suffering the toxic effects of the seniority integration dispute resulting from the 2005 merger of

US Airways and America West. *See also, Addington v. U.S. Airline Pilots Ass'n*, 606 F.3d 1174 (9th Cir. 2010) (ordering dismissal of DFR suit on ripeness grounds); *U.S. Airline Pilots Assn. v. AWAPPA, LLC*, 615 F.3d 312 (4th Cir. 2010) (affirming dismissal of RICO litigation).

After that experience, ALPA convened a blue ribbon internal panel, whose study, findings and recommendations resulted in significant amendments of ALPA Merger Policy in 2009. The most important amendment to Merger Policy that emerged from this process replaced the list of five goals that negotiators, mediators, and arbitrators were required to weigh in integrating seniority lists with three quite specific factors – longevity status and category, and career expectations – which arbitrators are now required to consider. It is that revised April 2009 Merger Policy which governs the Award in this case.

Of particular significance, the revised Merger Policy expressly restores longevity as a factor that must be considered in an SLI proceeding. *Cf., Delta-Northwest at 13*, and *America West-US Airways at 2*, with Merger Policy (JX A), Part 3.C.4.e. “Longevity,” as used in revised ALPA Merger Policy, codifies the prior practice of considering as equity the time a pilot has spent in-seat. *See generally* M. Arcamuzi, *The New ALPA Merger Policy*, AIR LINE PILOT, at 31-32 (Oct. 2009). Such length of service is the period from date of hire to the snapshot date, adjusted by a pilot’s furlough time and certain other non-flying time.

The revised Policy directs this Arbitration Board to construct the UAL/CAL ISL fairly and equitably, by taking into account, and weighting appropriately, any factors we deem appropriate. The revised ALPA Merger Policy gives the Board a great deal of

flexibility. However, the revised Merger Policy mandates that we consider three specific factors – status and category, longevity and career expectations. Those three expressly listed factors must be considered, but “in no particular order and with no particular weight.”

The revised 2009 Merger Policy is clear that we must at least consider all of the listed factors. Based upon the language and context of the revision, we interpret that instruction as guidance to **use** all three factors, not just look at them, unless we find some good reason for not using one or more of them. After carefully reviewing the Merger Policy and the evidence, we find no good reason to omit any of the listed factors in constructing our awarded ISL in this case.

We hold that all three listed factors are relevant, important and necessary to produce a fair and equitable ISL in this case. In fact, it is clear from the parties’ proposals that using all three factors produces a much fairer and more equitable list than not doing so. That conclusion drives our determinations concerning the competing proposals of the Committees and underpins the crafting of the ISL (Exhibit A) and integral Conditions and Restrictions (Exhibit B) of our Award.

B. THE COMPETING ISL BUILD MODELS

The CAL Committee’s list build model employed neither longevity nor category. It relied exclusively on a single factor—status—for a one-to-one ratio of some of the UAL Captains with an inflated bloc of 2,299 CAL Captains premised upon CAL System Bid 14-02, which occurred during post-merger combined operations under a single management. Even status consideration was dropped for 291 UAL Captains, deemed by

the CAL Committee model “unneeded” or “overstaffed”. Instead, they were lumped together with UAL and CAL first officers in a second ratioed category ostensibly based upon the different “augmentation rates” of the respective Carriers. The CAL proposal then posited career expectation protection by several conditions and restrictions.

The UAL Committee's list build model addressed and incorporated all three factors specified by ALPA merger policy: longevity, status & category and career expectations. It did so by creating separate seniority lists using longevity for one and status & category for the other, then merging the two to produce a hybrid list. In combining the separate longevity and status & category lists to form the ISL, the UAL team proposed weighting each factor at 50%, so that longevity “counted” exactly as much as status & category. The UAL proposal then protected career expectations through conditions and restrictions.

C. CONCLUSIONS ABOUT THE BUILD MODELS

The primary failing of the CAL proposal's use of only status, to the virtual exclusion of all other Merger Policy factors, is that it unfairly, inequitably and disproportionately benefits one pilot group to the consequent detriment of the other. If either group proposed using any other single Merger Policy factor alone, like longevity, the resulting list would also be distorted, but in a different direction. Another defect of the CAL Committee's proposed ISL is that it unjustifiably creates extremely large tiers of pilots from a single airline. Some such distortions are inevitable in any merger of seniority lists. But the career-long blocking effect of those spawned by the CAL proposal could harm morale and employee relations for decades to come.

The CAL Committee's use of an April 1, 2013 base list date is manifestly intended to embrace the windfall of potential Captain upgrades in February 2014, generated by premerger CAL System Bid 14-02. Memorializing that windfall by treating captains (or at least some captains) as fungible equals irrespective of aircraft, while treating others as “unneeded”, is not a bone fide status & category ratio. And simply disregarding longevity as an equity factor seems engineered to justify the unfair stapling to the bottom of the list all United pilots in furlough status on May 3, 2010.

On the May 3, 2010 MAD, United had many more pilots on furlough than Continental. However, United’s furloughees, in the main, had significantly greater longevity than the Continental furloughees. Those UAL furloughees brought substantial longevity to the merger, compared to the CAL pilots at the bottom of the CAL list.³ Further, as a consequence of their respective hiring patterns, United’s First Officers as a whole had greater longevity than, but also were older than, similarly situated Continental First Officers. A proposal that completely ignores sweat equity longevity cannot be a plank in our ISL platform.

In our considered judgment, both the methodology of the CAL Committee and its resultant proposed ISL are incompatible with the revised ALPA Merger Policy. Aside from the windfall inequities generated by using an April 1, 2013 snapshot date, total disregard of the longevity factor cannot possibly be justified in the factual circumstances of this case. Not surprisingly, the ISL produced by the CAL Committee's fatally defective methodology is neither fair nor equitable.

³ Six hundred twenty-one of the most junior 1445 United pilots had greater longevity than all 1512 Continental pilots hired after 2005 (i.e., the bottom third of the CAL list). Tr. 2481-83 (Ruark); UX-5 (Ruark), at 18. The next, more junior group of 633 UAL furloughees had longevity similar to the CAL pilots hired between 2005 and 2007. The final, most junior group of 192 UAL furloughees had longevity similar to the 148 CAL pilots on furlough at the time of the merger.

At the end of the day, despite our best efforts, we were unable to find a way to adjust or modify the CAL Committee's list build model to produce an acceptably fair and equitable ISL. Even with a different snapshot date, contrived differentials premised on post-merger changes inflating premerger career expectations still drive that ersatz ratioed model. A gerrymandered approximation of a status-only model that uses assumptions at odds with Merger Policy cannot be used to build our Award.

D. INTERPRETING ALPA MERGER POLICY

1. Jurisdiction and Authority

Part 3C2d of the applicable ALPA Merger Policy states, in relevant part: *“The date of hire shall be the date upon which a pilot **first appears upon the Company’s payroll as a pilot and also begins initial operational training** required to perform such duties in airline operations.”* (Emphasis added). Some “date of hire” definition words, viz., “on the Company's payroll” were in contention between the pilot groups in the first ISL arbitration under the revised 2009 Merger Policy. *Pinnacle-Colgan-Mesaba*, (Bloch, 2012). In deciding that the facts of that case allowed creation of a fair and equitable ISL without the necessity of interpreting the contested phrase, Arbitrator Richard Bloch made these observations:

For several reasons, the Arbitrator need not, therefore does not, resolve the interpretive issue presented. To the extent an ambiguity exists as to the intended meaning of the above-cited provision, it is an issue that ought be resolved by the parties themselves, or by the drafters. It is at least unclear that this type of interpretive exercise is properly within the scope of this Arbitrator in this case and, in any event, there is no evidence whatsoever as to either the drafting history or, for that matter, the precise manner in which the policy has been applied. Most importantly, resolution of that issue is not required for purposes of implementing the methodologies set forth below.

In this case, the interpretation and proper application of all of the above-emphasized words are in sharp contention between the Committees. Moreover, none of the considerations that caused Arbitrator Bloch's judicious abstention are present in our record. To the contrary, interpretation and application of the "date of hire" definition in Part 3C2d of the revised ALPA Merger Policy is unavoidably at the heart of the present dispute over the longevity of hundreds of pilots.

All concerned obviously anticipated the likelihood that we must, of necessity, address and resolve those contentions in this case. Thus, they took appropriate steps to confirm clearly our jurisdiction and authority to do. *See* the February 6, 2013 letter from ALPA President Donald Lee Moak, jointly addressed to Counsel for the Merger Committees, and the Memorandum of Agreement entered into by Counsel, effective February 22, 2013. (UAL Opening Statement Exhibits U-1 and U-2).

President Moak's joint letter reads, in parts most pertinent:

* * *

This responds to your letters of February 4th and 5th, respectively, concerning the CAL-UAL SLI and the definitions of date of hire, furlough time and longevity as applied to this SLI under Merger Policy. Contrary to both of your requests, I see no reason for intervention by the president's office.

These issues have arisen in the exchange and review of certified seniority lists between the Merger Representatives of the two pilot groups. Part 3, Section 3-C-4-b of ALPA Merger Policy provides:

The merger representatives shall resolve any and all disputes and inconsistencies with regard to the employment data exchanged. The representatives shall be empowered to compromise their differences to the extent necessary to reach agreement except that the relative position of the flight deck crewmembers on their respective seniority lists shall be maintained. Areas remaining in disagreement shall be reduced to writing, stating the contentions of the parties, and shall be resolved, if necessary, by utilizing the mediation and arbitration procedures set forth in Part 3C 5 below.

It appears from your correspondence that the Merger Representatives of both pilot groups agree that the issues under discussion can be resolved (to the extent necessary) by the mediation and arbitration procedure under the SLI Protocol. Accordingly, and presuming that you will both so inform the neutrals involved in your process, there should be no concern as to their acceptance of that responsibility.

* * *

After receiving that letter, Counsel for the Committees agreed as follows:

Specifically, if and to the extent that the Arbitration Board deems it necessary and appropriate in achieving a “fair and equitable integration of the Continental and United pilot seniority lists,” the Board has the authority to interpret and apply to the particular circumstances of this case the phrases “grandfather or similar special seniority rights,” “fair and equitable integrated seniority list,” “career expectations,” “longevity,” “date of hire,” “furlough and “status and category,” the other language quoted from ALPA Merger Policy hereinabove, and related provisions of ALPA Merger Policy.

Proper date of hire calculation, as defined in Merger Policy, is an essential component of the Board-modified hybrid model used to construct our awarded ISL. It is therefore incumbent upon us to resolve the various contentions about the meaning and intent of the Merger Policy.

In one sense, resolving that imbroglio has no impact on the CAL Committee's proposed ISL, because its status-ratioed list build model treats date of hire as irrelevant in the facts of this case. But the Board already rejected that approach and concluded that the list build model based on that assumption produced an ISL inconsistent with Merger Policy.

The CAL Committee posits, alternatively, that its interpretations of “date of hire” and “furlough” for the CAL Express pilots not only are consistent with the plain language and manifest intent of ALPA Merger Policy but also result in fair and equitable placement of the affected pilots on its proposed ISL. *Arguendo*, CAL urges that

Continental Airlines management records contain no reliable data for appropriate calculation of either the date of hire of those pilots at CAL mainline or the dates when such a pilot “flowed” up or down from CAL mainline operations to fly for Continental Express (“COEX”) or its constituent regional carriers. In our considered judgment, those contentions are not tenable or sustainable.

2. The Longevity Dispute

Reduced to essentials, the “date of hire” dispute centers on the Continental Merger Committee's contention that the date of hire for hundreds of CAL pilots in the middle tier of the premerger Continental list, and by extension the fair and equitable placement of those pilots on the awarded ISL, is the date they began flying as pilots of companies that were later combined with Continental through corporate mergers or acquisitions as wholly-owned subsidiaries *i.e.*, Continental Express (“COEX”). [For purposes of this discussion, Continental Express includes Britt Airways (“Britt”), Rocky Mountain Airways (“Rocky Mountain”) and Bar Harbor Airways (“Bar Harbor”)].

At one point, COEX was a wholly owned subsidiary of CAL. Later, CAL sold its majority stake and is no longer an owner. Even though COEX was at that point an independent company, the CAL team would still count toward CAL mainline longevity all COEX flying before or after that sale and before and after flying in CAL mainline operations. In addition, the Continental Merger Committee would have us not “count” as “furlough time” any periods when CAL pilots faced with a RIF from Continental mainline flying, flew contractually available pilot positions at COEX before returning to CAL mainline. The United Merger Committee maintains that “counting” toward ISL longevity time spent flying for regional airlines under regional terms and conditions of

employment, whether before or after flying as a pilot for CAL mainline, contradicts the plain language and intent of Merger Policy.

Before proceeding further, it is important to emphasize what is and is not in contention. The CAL pilots whose longevity calculations are at issue comprise less than a quarter of the CAL premerger list, namely those pilots whose positions on the list were assigned under the terms of: 1) the Continental Express pilot seniority program appearing in Chapter 9 of the Continental Pilot Employment Policy (“PEP Chapter 9”); or 2) the Employment Opportunities and Furlough Protection Agreement, Letter of Agreement #7 of the IACP-Continental 1997 Collective Bargaining Agreement (“EOFPA”).

The premerger Continental seniority list also includes pilots whose placement on the list was awarded in one of four previous seniority list integration arbitrations: (1) *Continental-Texas International* (1983) (Greenbaum, Arb.); (2) *Continental-New York Air* (1986) (Bloch, Arb.); (3) *Continental-Frontier* (1987) (Nicolau, Arb.); or (4) *People Express-Continental-Frontier* (1991) (Ross, Arb.). The UAL Committee did not dispute and our hybrid ISL does not adjust the dates of hire and related longevity of the CAL pilots who were integrated by the four arbitration proceedings ending with the 1991 Ross Award (ranging from 1-1641 on the CAL Certified Seniority List, Jt. Ex. E.1). Similarly unchallenged and unaffected are the dates of hire of off-the-street CAL hires from the 1988–2003 period (including the Eastern Airlines hires in 1997) or the dates of hire and related longevity of any of CAL’s post-2004 hires (in the range from 3294-4807).

The UAL Committee did persuasively challenge the reported dates of hire for approximately 780 pilots, in the range between Thomas L. Hull and Christopher M. Green (listed with seniority Numbers 1642 and 3293). Those pilots are the regional (Britt, RMA, Bar Harbor and COEX) pilots hired by CAL in the years 1988 to 2003. The UAL Committee also persuasively challenged the CAL Committee's failure to report furlough periods for nearly 400 pilots (spread in the range from 2727 to 3293), who "flowed back" to COEX for certain periods during which their immediate peers were furloughed, including reductions in force arising from the 1995-96 demise of "CAL Lite". The available evidence demonstrates persuasively that such periods must be considered as "furloughs" under Merger Policy.

3. The "Company"

ALPA Merger Policy Part 3.C.2.d defines date of hire by reference to the time a pilot first begins training for service as a pilot on behalf of "the Company". Similarly, Merger Policy requires discounting periods of "furlough", as well as "intervening periods of service other than as a flight deck crew member with this Company", when creating a pilot group's seniority list for SLI purposes. The CAL Committee argues that former COEX pilots should be credited with dates of hire beginning at a regional carrier. It also maintains that periods of time when pilots "flowed down" to COEX while pilots senior to them were being furloughed, should not be counted as furlough time. Those claims assume that CAL and COEX constituted one "Company" for purposes of Merger Policy. The available evidence does not support that assumption.

The corporate relationship between CAL mainline and the various COEX carriers was complex and constantly changing. Texas International, headed by Frank Lorenzo,

acquired both Continental and People Express in the 1980s. At the time of the acquisition, People Express owned Britt Airways. Continental later acquired an interest in Bar Harbor and Texas International acquired RMA. Upon CAL's exit from bankruptcy, the assets of the regional carriers were transferred to COEX.

COEX was a wholly owned subsidiary of CAL between 1993 and 2001, though CAL and COEX were never merged. In 2002, CAL's ownership of COEX dropped when the latter company's shares, under the name ExpressJet, were sold in an initial public offering. See CAL 10-K, 2003. CAL sold additional shares in 2003, dropping its ownership below 50%, and sold the rest in 2004. *See*, CAL 10-K, 2004.

Under these morphing corporate structures, the two companies operated under different sets of FAA regulations and separate operating certificates. Their pilots had separate employment policies (during the years when there was no pilot union) or CBAs with different terms and conditions of employment – “regional terms and conditions of employment” for COEX pilots and “mainline terms and conditions of employment” for CAL pilots. The separate CBAs for the CAL and COEX pilots defined “the Company” as either CAL or COEX respectively. The pilots flew different equipment, stayed at different layover hotels, dealt with different managements and were paid through separate payrolls by separate companies with different IRS Employer Identification Numbers.

Whatever the corporate ownership structure may have been at various times, Continental and COEX never were a single “Company” as we understand the meaning of that term in ALPA Merger Policy.

4. PEP and EOFPA

The CAL Committee also bases its date of hire position on several documents that outline “flow-through” arrangements that applied to COEX pilots in the 1988-2003 period, identifying six iterations of personnel policies that covered the pilots whose longevity is at issue:

Policy		Number of Pilots Covered	Percentage of Challenged DOH Group
Pilot Employment Policy (“PEP”) Ch. 9	February 1, 1988 Group	145	18.6%
	Feb. 1 to Aug. 8, 1988 Group	23	3.0%
	4:1 Ratio Group	39	5.0%
	Compression Group	262	33.6%
Employment Opportunities and Furlough Protection Agreement (“EOFPA”)	Original EOFPA	189	24.2%
	Supplemental EOFPA	122	15.6%

The facts of the relationship between CAL and COEX establish that they were not a single “Company” during the period in which the PEP, the EOFPA, and the Supplemental EOFPA were in place. Indeed, the language of the policies themselves demonstrates that CAL and COEX were never a single “Company.”⁴ They carefully and

⁴ For example, the PEP refers to the “[t]ransition of CAL- Express [p]ilots to CAL,” PEP Ch. 9, § A (emphasis added), notes that future new hire positions “at CAL” would first be offered to certain eligible COEX pilots in the Feb. 1 to Aug. 1, 1988 block, *id.* § A.3.a, and provides that “[a] CAL-Express pilot will become a CAL employee as of the date he begins training to staff a position at CAL,” *id.* §B.2.a (emphases added). See also PEP Side letter § 1.b (“At such time as [CAL] requires additional pilots . . . , offers of employment shall first be made in [CAL] seniority order to those [COEX] pilots holding reserve seniority numbers at [CAL].”) (emphasis added); § 1.d (“[COEX] pilots as of September 1, 1993 holding a reserved seniority number at [CAL] senior to current [CAL] pilots may not exercise their seniority to bid for vacancies at [CAL] until such time as the [COEX] pilot has been offered and has accepted employment as a pilot at [CAL].”)

consistently emphasize the distinctions between CAL and its Express operations.

Even taking these arrangements on their terms, they did not provide that COEX pilots would keep for all purposes their COEX date of hire upon transitioning to CAL. Nothing in those arrangements provides that the date of hire at a COEX carrier should be counted as the CAL date of hire or that time on furlough from CAL mainline should not count because some of those pilots flew at COEX during a mainline RIF period. Rather, the various arrangements simply set up a preferential hiring program using pre-existing regional carrier dates of hire.

Finally, the CAL Committee position is independently problematic because, based on the terms of the PEP Chapter 9, over 60% of the pilots in question “flowed up” from COEX to CAL under a policy that was unilaterally maintained and controlled by management during a period when there was no pilots’ union on the property. Neither contrary management personnel practices nor negotiated policies can prevail over the Merger Policy’s definitions.

5. The Zeus, Defined Benefit Plan, and INDOC

Merger Policy, Part 3.C.2.d. defines date of hire as the “date upon which a pilot first appears upon **the Company’s** payroll as a pilot **and** also begins initial operational training” (emphasis added). Proper application of that conjunctive requirement to

(emphasis added). The EOFPA sets forth the procedures by which “COEX pilots shall be selected *for employment at CAL*,” EOFPA § 1.C (emphasis added), and refers to a pilot’s ability to “delay his *transition to CAL*,” *id.* § 1.G. The programs variously speak to an opportunity to participate in the CAL pilot selection process (PEP § A1.c), to be “*eligible to interview for a pilot position at CAL*” (*id.* § A.2.a), “*to interview for potential employment with Continental*” (PEP Side Letter § 1.c), or to “*be placed in an eligibility pool*,” (EOFPA § 1.B) from which he or she may “*accept[] a CAL new hire pilot opportunity*” (*id.* § 1.F). *See also* Supplemental EOFPA ¶ F.4 (outlining provisions for certain pilots entering the eligibility pool to be “*entitled . . . to a Continental new hire class date*”).

calculate the longevity of the pilots at issue turns upon the use of employment data establishing their initial training dates for CAL mainline flying and the periods of time when they “flowed” between COEX and CAL mainline flying.

The Merger Committees were sharply divided as to whether data establishing initial CAL mainline qualification training date and “flow-back” furlough periods for the disputed COEX pilots existed in any format from which objectively reliable or accurate longevity calculations could be made.

In response to information requests filed under the terms of the Process Agreement, United management initially advised the Committees that such information was not recorded in any single accessible database. After additional inquiries, the Company did produce some training records (the so-called “Zeus” database), records of time credited toward Continental’s now-frozen DBP data and certain “XJT Furlough” information. The Zeus database contains dates on which Continental pilots, whether “flow-through” or “off-the-street hire, first began qualification training to fly on the mainline. The DBP data show retirement plan participation and the XJT entries of management indicate “flow-down” furlough periods.

By a process of cross-referencing Zeus, DB and XJT data points, the UAL Committee concluded the Zeus records were a generally reliable source for calculating the date of hire longevity of the cadre of disputed COEX pilots in its hybrid build model. Emphasizing the Company's less than ringing endorsement of its Zeus database and the five-year difference between Zeus records and “frozen” DBP data, the CAL Committee contended the Zeus data were inherently unreliable. Additionally, it posited that calculation of accurate longevity for COEX pilots from available data was impossible.

Midway through the arbitration hearings, with the encouragement of the Board, Company managers made another search of employment records. They located and sent to both Committees a previously undiscovered pertinent database, maintained by premerger Continental for FAA reporting purposes. Codenamed “INDOC”, that database sets forth start dates of qualification training classes for pilots prior to performing CAL mainline flying.

After giving the Committees ample time to study that information, the Board invited further comment. The record evidence leaves us with no doubts about the authenticity of the INDOC database. We are persuaded that INDOC corroborates the accuracy of the cross-referenced Zeus/DB/XJT longevity calculations the UAL Committee used in building its hybrid model.

E. THE BOARD’S HYBRID ISL MODEL

1. General Principles

Longevity or “date-of-hire” integration consists of constructing an ISL by ranking employees solely based on their length of service at their respective pre-merger carriers. The status & category “ratio” methods characteristically construct the new seniority list with the goal that each individual’s pre- and post-merger percentile ranking on his or her seniority list remains constant.

As the UAL prehearing brief aptly points out, those two methods inherently “pull in different directions”. That is so because each model posits fundamentally different value judgments about the proper interpretation of the commonly espoused “fair and equitable” benchmark. The status and category model attempts to encapsulate in resin

and transfer unchanged an individual's premerger entitlements and the longevity model measures only individual's competitive ranking on the premerger list.

Conditions under which either traditional method, standing alone, produces an equally fair and equitable merged list are indeed rare. Moreover arbitral attempts to ameliorate the inevitable career expectation distortions of an ISL based solely on one or the other method by means of elaborate and lengthy Conditions and Restrictions have proven counterproductive and only served to perpetuate the pre-merger disputes. *See Northwest/Republic* (Roberts, 1989) and 24 subsequent interpretation awards between 1989 and 2010.

No method of using unqualified status & category or longevity seniority integration models adequately satisfies the equity and fairness standards underlying both methods. Under the current ALPA Merger Policy, the ISL process "both anticipates and accommodates custom tailoring a list that is responsive to observed 'equities' of the respective parties." *Pinnacle-Colgan-Mesaba*, at 3 (2011) (Bloch, Arb.).

On its face, we found the UAL hybrid proposal to be conceptually truer to ALPA merger policy than the CAL proposal. It is also clear to us that using a hybrid methodology that combines elements of both the Date-of-Hire and Status/Category ratio models can reduce aggregate equity distortion. The fairly straightforward combination of those two most commonly used methods in the UAL model was a good conceptual base for building our ISL. We therefore dug deeper to analyze and assess whether the 50/50 factor weighting UAL model proposed at the hearing produced an integrated list that we could judge both fair and equitable.

After carefully considering a large number of different alternatives, we concluded the UAL Committee's five-step list build model, with appropriate modifications by the Board, achieved our goal of a fair and equitable ISL in this case. To put it directly, using all of the ALPA Merger Policy factors produces a fair and equitable IAL; ignoring any of them would produce an unfair and inequitable seniority list.

In constructing our awarded ISL, Exhibit A, we made adjustments in Step 5 (“Factor Weighting”) of the UAL hybrid model and added a new Step 6 to update the October 1, 2010 “snapshot date” lists used as “Base Seniority Lists” in Step 1 to build the awarded hybrid ISL. We explain those adjustments in the next two sections.

2. Step 5 Modifications

Although the concept of a 50/50 hybrid approach that weighted the two quantifiable factors equally was cosmetically appealing, we found that equal weighting still produced distortions in the overall list. It did so primarily by inserting unjustifiably large blocs of pilots from just one or another of the two legacy carriers. Accordingly, we concluded that some modification of the Step 5 factor weighting analysis was appropriate and necessary to achieve a more fair and equitable distribution.

In recalculating Step 5 of the UAL approach with alternative factor weights, we found that incremental modifications reducing the importance of longevity and increasing the importance of status & category reduced the observed inequitable distributions. Moreover, giving greater importance to status & category accounts more appropriately for important differences in the respective premerger fleets, widebody aircraft count and international flying, while still fairly recognizing the legitimate career expectations of the furloughed pilots in each group.

We found movement in the direction of greater fairness with each such incremental change in the 50/50 factor weightings. But after comparing various options, we found that giving 65% weight to status and category and 35% to longevity blended the two pilot groups most fairly and equitably from the top of the list to the bottom. After much discussion, we unanimously agreed to adopt the UAL list build model, with a 65/35 modification of the Step 5 factor percentages, thus producing the fair and equitable ISL which is Attachment A of our Award in this matter.

3. Step 6

As proposed in the arbitration hearings, the UAL Committee's model uses October 2010 lists in Step 1 of building its proposed hybrid ISL. By the time of the arbitration hearings in Summer 2013, those lists were going on three years old. When an arbitrated SLI occurs long after the snapshot date premerger lists, it is standard practice for the arbitrators to require updating of the base build lists by culling deceased, resigned or retired *etc.* pilots. To that end, during mediation under the Process Agreement, the Parties in this case signed a March 1, 2013 Agreement setting forth a detailed process for such updating. (See Paragraph 3 of the Process for Updating Certified Lists as of April 1, 2013, Joint Exhibit G, in Appendix 1, attached).

On that basis, the two Committees updated their respective May 17, 2010 lists. But, as appears clear from cross-examination testimony at transcript 4053-4054 and Joint Exhibit G itself, the October 1, 2010 lists of we used to build the awarded ISL were not similarly updated. Thus, Step 6 of our model updated the 65/35 hybrid ISL, using Paragraph 3 of the process agreed to by the Parties: "Remove individuals no longer on

the certified lists as of April 1, 2013 (*e.g.*, death, termination, retirement, resignation”).

Based upon all of the foregoing, we directed the Technical Assistance Team to build an ISL, using the UAL hybrid model modified by our Steps 5 and 6. That ISL is attached as Exhibit A of our Award.

4. Constructive Notice Pilots

The concept of a constructive notice date ("CND") is not complicated: it is the date after which any pilot hired by either premerger airline is deemed to know that he or she will be working for a combined entity and that his or her career expectations will be a product of the success or failure of the combined airline, irrespective of which airline hired the pilot. *See, e.g., Atlas-Polar* at 9 (“The concept of ‘Constructive Notice’ is that when newly-hired pilots know, or should know, that their flying careers, and specifically their seniority status, may be determined in reference to an additional group of pilots, such pilots cannot be considered to be part of the premerger group and must be treated in a manner consistent with what should have been their realistic expectations at the time they were hired.”); *see also Alaska-Jet America* at 7.

By agreement of the parties in this case, the CND is the MAD, May 3, 2010. *See Protocol Agreement*, JX B, § 2. Under the CND doctrine, “constructive notice pilots” are junior to all pilots on the merged ISL and listed in order of date of hire consistent with the Joint Collective Bargaining Agreement (JCBA.). There is no dispute between the two Committees as to the effect of the constructive notice doctrine. The only differences between them are focused narrowly on just two pilots on the CAL list, *i.e.*, whether it is fair and equitable for this Board to strictly apply the CND doctrine to Jonathan Yost and Craig Watts ("Yost" and "Watts").

Some of the surrounding facts are confidential and judicially sealed, but the facts of record are pretty straightforward. After passing the CAL pilot selection process, including the panel interview and simulator check, Yost was offered a pilot position at Continental on January 11, 2007, with promised enrollment in the first available training class after completion of his Air National Guard service. For reasons not developed in our record, several extensions of his full-time Air National Guard deployment prevented him from reporting for duty at CAL and entering the training class until September 27, 2011.

The UAL Committee maintains that Yost should be treated as a CND pilot under strict application of the doctrine, citing the Merger Policy definition of "date-of-hire" and the decision of a Federal District Court in *Quick v. Frontier Airlines, Inc.*, 544 F. Supp. 2d 1197 (D. Colo. 2008). The CAL Committee urges that mitigating circumstances, namely the lengthy extension of his military service to the Country, warrant a relaxation in the strict application of the doctrine. And because Mr. Watts is senior to Yost on the Continental list, the CAL Committee posits he must be accorded similarly flexible treatment, because Merger Policy bars Yost from "leapfrogging" above Watts on the combined ISL. (Part 3, Section C.4.d: "No integrated list shall be constructed which would change the order of the flight deck crew members on their own respective seniority lists."). ⁵

Since the constructive notice doctrine ultimately is premised on fairness and equity, ISL arbitrators have exercised discretion about its application in some *sui*

⁵ The CAL Committee also advanced an equity argument for Watts, based upon a Settlement Agreement disposing of certain employment related litigation he initiated against Continental. That settlement included a conditional offer of employment, which eventually ripened into his entry in the September 27, 2011 training class ahead of Yost. Because of our disposition of the Yost claim and the operation of Merger Policy Part 3, Section C.4.d, we do not address the Watts equity claim *per se*.

generis situations. Sometimes that has resulted in less than strict application in circumstances when injustice would result from an overly rigid approach. *See, e.g., Northwest-Republic* at 7-8 (1989) (Roberts, Arb.); *Saturn-Trans International* at 17-18 (1977) (Feller, Arb.). After carefully considering the undisputed facts in light of the fairness and equity standards that underpin Merger Policy, the Board concurs with CAL Committee's positions regarding both Yost and Watts.

The District Court in *Quick v. Frontier, op. cit.*, held that the airline's reversal of its earlier decision to relax the constructive notice doctrine due to military service. The court's decision in *Quick* turned solely on the definition of "employment" under the express language of the Uniformed Services Employment and Reemployment Act ("USERRA"), 38 U.S.C. § 4301 *et. seq.*

In short, the *Quick* decision begs the questions of Merger Policy fairness and equity presented in our case. It is those fundamental Merger Policy standards that drive our determination to sustain the CAL Committee's petition and place Yost above the CND line. Merger Policy Part 3, Section C.4.d requires similar treatment of Watts on our awarded ISL. However, the CAL suggestion of placing these two pilots high up on the ISL, ahead of thousands of senior pilots hired years, or even decades, before them would not be fair and equitable.

Rather than simply stapling Watts/Yost to the bottom of the ISL, we added them to the end of the October 2010 CAL Seniority List. Watts remains above Yost, with each assigned a Longevity credit of zero in our hybrid build model. This gives them both slots on the bottom tier of the awarded ISL, but fairly places them among the least senior furloughed pilots.

F. CONDITIONS AND RESTRICTIONS

Our review of many prior ISL arbitration decisions teaches that elaborate conditions and restrictions unduly complicate implementation of an Integrated Seniority List. The interminable disputes they generate tend to breed animosity that corrodes flight crew relations. Our Award seeks to achieve its goals of fairness and equity primarily through the construction and creation of the ISL itself, while awarding only standard and necessary conditions and restrictions of limited reach and duration.

In most respects, the competing Conditions and Restrictions proposed by the respective Committees covered traditional common ground and mutually satisfied the fair and equitable standards of Merger Policy. In constructing our conditions and restrictions, we selected what we deemed to be the best of each and made minimal adjustments. But it is necessary that we address and resolve three points of controversy in those common subject matter proposals.

1. “Qualification Training”

The UAL Committee’s pilots in training proposed C&R (Number 1.3) is as follows:

Pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed qualification training for a new position (e.g., B-777 Captain or A-319 First Officer) may be assigned to the position for which they are being or have been trained, regardless of their relative standing on the Integrated Seniority List.

Two of the CAL Committee's proposed C&Rs address pilots in training:

Neither the implementation of the ISL nor the implementation or expiration of a condition or restriction herein, in and of itself, shall cause the displacement of any pilot from his or her then-current position (including a pilot who has been awarded a position but has not commenced or completed training).

Pilots who, at the time of implementation of the ISL, are in the process of completing or who have completed qualification training for a new position (*e.g.*, B-777 Captain or A-

320 First Officer) may be assigned to the position for which they are being or have been trained, regardless of their relative standing on the ISL. Pilots awarded new positions shall be considered as “in the process of completing . . . qualification training for a new position”, within the meaning of this provision, unless and until they have cancelled their bids for the new positions, withdrawn from training, failed the training without further recourse to further training, or successfully completed the training.

The CAL Committee’s training protection proposals include “a pilot who has been awarded a position but has not commenced or completed training.” (Emphasis added). That expanded definition would have the Board sweep into protective coverage some 400 CAL pilots awarded tentative February 2014 positions in the January 2013 CAL Bid 14-02. As of the close of these arbitration hearings, many of those individuals had not even been awarded a training date, let alone begun training. Moreover, treating them as “currently in” those positions or “in the process of completing training” would unilaterally rewrite language mutually agreed to by the CAL pilots, the UAL pilots and the Company (See TPA Section 5-B. Acceptance of the Integrated Seniority List, in Appendix 1).

There simply is no fair and equitable basis for this Board to award what the CAL Committee proposes. Under the guise of protecting pilots from displacement from “then-current positions”, it would extend such protection to pilots who don’t actually have such positions at all. In short, if granted, it would interfere with the fair operation of the ISL forever by placing CAL pilots immovably in positions that their ISL seniority would not entitle them to hold. For all of those reasons, this Board did not adopt the CAL Committees' proposed C&R Numbers 1(b) and 1(c).

2. The Widebody Aircraft Fences

The traditional stovepipe preference of pilots for international long haul flying in widebody aircraft is well established. Nor is it a myth that for many years mainline

pilots, in general, have considered so-called “jumbo” jet aircraft flying as the pinnacle of career expectations. Premerger United's much older fleet had significantly more jumbo jets than did the premerger CAL fleet. Continental had no 747s and fewer 777s. But that is not the end of the story. It is not clear to us that flying jumbo-sized jets can remain for much longer the “holy grail” epitome of pilot career expectations. Few industries are as dynamic and unpredictable as the airline industry. That makes accurate prognostication of costs, markets and technologies problematic. That said, it appears from the record before us that size does still matter, but not necessarily jumbo size, *per se*.

Today's fleet replacement and expansion plans are driven by considerations other than gargantuan dimensions and tonnage capacity. The dialogue about the future of international widebody flying has shifted beyond size to include the economics and ergonomics of widebody long haul capability. Newly created types of modern widebody long haul aircraft, with enhanced fuel efficiency, offer improved economics relative to premerger fleets irrespective of market conditions. In that regard, the announced international fleet replacement program of the merged Carrier calls for reducing combined fleet complexity and associated operating costs by eliminating altogether B747, 777, and 767 aircraft types and transitioning to two widebody aircraft types, Boeing's B787 and the Airbus A350.

The premerger UAL quantitative advantage in the jumbo jet component of its largely outdated overall fleet is counterbalanced by qualitative advantages of premerger Continental's more balanced, modernized and technologically advanced overall fleet. UAL alone had B747s and more B777s, but it had none of the CAL premerger fleet's next

generation B737 ERs. Neither side had A350s or any on firm order for near term delivery. However, CAL alone anticipated delivery of cutting edge widebody B787s (which have since arrived), with more on firm order.

Pilot career expectations are driven in important part by fleet composition dictation of available status and categories. On the basis of the foregoing facts and conclusions, we judged the widebody fences of the UAL Committee unduly complicated, inequitable and overreaching. We adopted, with some modification, the CAL Committee's more streamlined proposal to fence, for five years, B787 widebody flying for premerger CAL pilots and B747/A350 widebody flying for premerger UAL pilots.

G. DISPUTE RESOLUTION PROCEDURES

Both Committees propose that this Board retain jurisdiction to resolve any disputes over the interpretation and application of the Board's Award. The only significant difference between the two is that the UAL Committee proposed a specific dispute resolution procedure and the CAL Committee did not. Instead, CAL suggested that we send the Committees back to negotiations over this subject and reserve the possibility of arbitration over the shape of a dispute resolution mechanism if those negotiations fail.

Our review of the UAL proposal indicates it is identical to that previously agreed to and since utilized effectively by both the Delta and Northwest Merger Committees and the Southwest and Air Tran Committees. We find it significant that this dispute resolution mechanism, agreed to by competing veteran pilot merger committees in both of those prior SLI proceedings, was created by the same sets of well-informed experienced legal counsel who represent the respective Committees in our case. Several

years on, the dispute resolution machinery they jointly fashioned still functions well. We can find no good reason to compel them to reinvent a different version. Our Award Exhibit B is modeled on that same time-tested and attorney-approved dispute resolution process.

H. CLOSING

Our summary conclusions paraphrase and echo caveats expressed by every ALPA Merger Policy arbitration panel that precedes us. We inquired as to where the respective groups have been and we have made reasoned judgments as to where they were going. We attempted to recognize reasonable expectations of both premerger groups but rejected proposals that could not be reconciled with governing Merger Policy or resulted in untenable windfalls. As in all such seniority integration exercises, the fairness and equity assessment is focused necessarily on the respective groups, not on each or any individual pilot. Any such distortions are minimized to the extent possible in our awarded ISL. Regrettably but inevitably, there will be perceived disparities and mismatches by individuals on both sides under the merged list. George Nicolau's four basic verities of ISL arbitration are as apt and vital today as they were nearly a quarter of a century ago: each case turns on its own facts; the objective is to make the integration fair and equitable; the proposals advanced by those in contest rarely meet that standard; and the end result, no matter how crafted, never commands universal acceptance. *See Federal Express and Flying Tiger Pilots*, (1990, at pp. 27-28.).

CONTINENTAL AIRLINES AND UNITED AIR LINES SENIORITY INTEGRATION ARBITRATION AWARD

A. The Integrated System Seniority List

The ISL for the pilots at United Airlines, Inc. shall be the List attached to this Award as Exhibit A.

B. Conditions and Restrictions

1. These conditions and restrictions are an integral part of the Integrated Seniority List ("ISL") and shall remain in full force and effect until their expiration by their terms.

2. Pilots hired by either CAL or UAL after May 3, 2010, other than pilots hired pursuant to Section 7-B of the TPA and CAL pilots Watts and Yost, shall be junior to all pilots on the ISL and shall be listed in order of date of hire consistent with the Joint Collective Bargaining Agreement (JCBA).

3. The ISL shall have only prospective effect. Specifically, and without limiting the generality of the foregoing, the following conditions shall apply:

a. There shall be no "system flush" whereby a pilot may displace another pilot from the latter's position as a result of the implementation of the ISL or the implementation or expiration of any condition or restriction.

b. Pilots on furlough status at the time the Integrated Seniority List is implemented may not bump or displace pilots in active status at that time.

c. Pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed qualification training for a new position (*e.g.*, B-777 Captain or A-319 First Officer) may be assigned to the position for which they are being or have been trained, regardless of their relative standing on the Integrated Seniority List.

4. There shall be no requirement or obligation to compensate Pilots for work not actually performed or positions not actually held during the period for which compensation is sought, as a result of the Integrated Seniority List and its implementation.

5. For a period of five (5) years beginning with the Bid Period in which the ISL is first implemented, or until the carrier takes delivery of its twenty-fifth (25th) B787 aircraft, whichever occurs sooner, no premerger Continental pilot may be awarded a Captain or First Officer vacancy on a B747 or A350 aircraft or displaced to one and no premerger United pilot may be awarded a Captain or First Officer vacancy on a B787 aircraft or displaced to one.

6. Should there be insufficient bidders from one premerger pilot group for any position in the allocated group of positions under paragraph 5 above, the filling of the position will be governed by the ISL. A pilot thereby awarded a position will, for purposes of processing future displacements under the collective bargaining agreement, be considered as junior to all pilots from the premerger pilot group entitled to the position. Notwithstanding the awarding of positions pursuant to this insufficient bidders provision, the restrictions set out in paragraph 5 above shall continue to apply during the terms specified in paragraph 5 above.

7. Until the first bid period 5 years following the implementation of the ISL, premerger UAL pilots involuntarily furloughed as of Oct 1, 2010 shall be subject to furlough (in their reverse seniority order) prior to the furlough of any premerger CAL pilot.

8. Each merger committee will promptly advise the other of the discovery of clerical or other errors that may affect the construction of the ISL. Any pilot erroneously omitted from the ISL shall be inserted into the ISL senior to the pilot from his or her pre-merger list previously junior to him or her. In the event of an inadvertent error in the construction of the ISL or an unintended omission of a pilot from the ISL, the Continental and United Merger Committees may agree upon and make an appropriate correction.

9. In accordance with ALPA Merger Policy, this Arbitration Board shall retain jurisdiction to resolve any unresolved disputes between the Continental and United Merger Committees as to the correct placement of a pilot on the ISL in accordance with the Board's Award, and/or the interpretation or application of these conditions and restrictions.

10. Post-Award disputes over the application of the ISL shall be resolved pursuant to the Dispute Resolution Procedures attached to this Award as Exhibit B.

Dana E. Eischen
/s/Dana Edward Eischen

Roger P. Kaplan
s/ Roger P. Kaplan

Dennis R. Nolan
/s/Dennis R. Nolan

Dated: September 3, 2013

MERGER POLICY AND RELATED AGREEMENTS

SECTION 45 – ALPA MERGER AND FRAGMENTATION POLICY 4/30/09

* * *

C. SENIORITY LIST INTEGRATION

* * *

2. Compilation of Employment Data

a. Each MEC will maintain a system seniority list including at least the following data: seniority number, name, date of hire, and date of birth.

b. The merger representatives shall be responsible for determining the date of hire, date of birth, seniority number, furlough time and leaves of absence time for each flight deck crew member on its current seniority list utilizing Company payroll records and/or other records as necessary. ALPA staff may be utilized to compile this data. Each furlough and leave of absence or any intervening periods of service other than as a flight deck crew member with this Company shall be listed separately with an explanation covering the period. Furlough time directly related to a labor dispute or work stoppage, ALPA leaves, military leaves, FMLA (or Canadian equivalent) leaves and sick leaves shall not be included.

* * *

d. The date of hire shall be the date upon which a pilot first appears upon the Company's payroll as a pilot and also begins initial operational training required to perform such duties in airline operations. . . . Where an initial date of hire as a flight deck crew member is different from an initial date of hire as a pilot as defined above, both sets of data, together with explanations, shall be compiled for the purpose of resolving any inconsistencies among the parties to the merger with respect to special rights for such individuals.

* * *

4. Seniority List Integration – Negotiations

* * *

b. The merger representatives shall resolve any and all disputes and inconsistencies with regard to the employment data exchanged. The representatives shall be empowered to compromise their differences to the extent necessary to reach agreement except that the relative position of the flight deck crew members on their respective seniority lists shall be maintained. Areas remaining in disagreement shall be reduced to writing, stating the contentions of the parties, and shall be resolved, if necessary, by utilizing the mediation and arbitration procedures set forth in Part 3C 5 below.

* * *

d. No integrated list shall be constructed which would change the order of the flight deck crew members on their own respective seniority lists.

e. The merger representatives shall carefully weigh all the equities inherent in their merger situation. In joint session, the merger representatives should attempt to match equities to various methods of integration until a fair and equitable integrated seniority list is reached. Factors to be considered in constructing a fair and equitable integrated seniority list, in no particular order and with no particular weight, shall include but not

be limited to the following:

- Career expectations.
- Longevity.
- Status and category.

f. No integrated seniority list shall be subject to MEC or membership ratification.

5. Mediation and Arbitration

a. General

(1) The process described below includes two steps: mediation and arbitration.

(2) The purpose of mediation and arbitration shall be to reach a fair and equitable integrated seniority list, consistent with ALPA policy. The merger representatives and any Arbitrator serving in a mediation or arbitration capacity shall be bound by the provisions of Part 3C, subsections 4c, 4d and 4e above in constructing an integrated seniority list.

* * *

c. Arbitration Board and Proceedings

(1) Issues to be decided at the arbitration step shall be heard by a three-person Arbitration Board.

(2) The Arbitration Board shall be composed of three persons, all of whom shall be neutrals chosen by the merger representatives within twenty (20) days of the PID from a list of Arbitrators approved by ALPA, unless the involved MECs agree to have an Arbitration Board composed pursuant to subsection c(2)(a) below. The Chairman of the Arbitration Board shall be designated by agreement among the merger representatives or by the members of the Arbitration Board in the absence of such agreement.

* * *

e. Opinion and Award

(1) The Opinion and Award of the Arbitration Board shall be made and written in executive session and shall bear the signature of the three Arbitrators. . . . Participation in executive sessions shall be limited to Arbitration Board members only and the Arbitrators (or single Arbitrator of an Arbitration Board constituted under subsection c2(a) above) shall decide all issues.

(2) The Award of the Arbitration Board shall be final and binding on all parties to the arbitration and shall be defended by ALPA. The Award shall include any agreements reached at the mediation step. The Arbitration Board will include in its Award a provision retaining jurisdiction until all the provisions of the Award have been satisfied for the limited purpose of resolving disputes which may arise between the pilot groups with regard to the meaning or interpretation of the Award.

* * * * *

TRANSITION and PROCESS AGREEMENT
09/26/10 [Extended on 02/29/12]

THIS TRANSITION and PROCESS AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between CONTINENTAL AIRLINES, INC., UAL CORPORATION, UNITED AIR LINES, INC., and the AIRLINE PILOTS in the service of CONTINENTAL AIRLINES, INC. and UNITED AIR LINES, INC, respectively, as represented by the AIR LINE PILOTS ASSOCIATION by and through the ALPA Master Executive Councils of the Continental and United Pilots.

Purpose of this Transition and Process Agreement

Continental and UAL have entered into an Agreement and Plan of Merger, dated as of May 2, 2010 to bring about a “merger of equals” business combination.

* * *

The Parties, recognizing the value of the merger to the present and future shareholders of UAL and Continental, to the Pilots represented by ALPA, to the other employees of Continental and United, and to the traveling public, wish to begin the process to establish terms for a smooth and seamless movement from the present situation of separate Pilot groups employed by different airline companies and operating under separate contracts, to a single, unified Pilot group operating under a single contract, employed by a single air carrier within a single transportation system.

The present Transition and Process Agreement is the first step toward achieving this goal. Therefore, the Parties agree as follows:

* * *

Section 1

Definitions used in this Transition and Process Agreement

* * *

Seniority List Integration; SLI. The process agreed upon by the Continental and United MECs, and approved by ALPA in accordance with ALPA Merger Policy, for achieving an Integrated Seniority List, pursuant to the Protocol attached hereto as Attachment B.

* * *

Section 4. Separation of Operations

* * *

4-C. Aircraft.

(i) A list of all aircraft in the service of, or stored by, each Airline, and all orders, options and anticipated returns as set forth in the Airlines’ respective fleet plans as of May 2, 2010, is attached hereto as Attachment “A”. Such aircraft in the service of, stored by, or on order or option by United shall be designated as “United Aircraft” and such aircraft in the service of, stored by, or on order or option by Continental shall be designated as “Continental Aircraft.” Except for Pilots hired from one Airline by the other (whether before the effective date of this Transition and Process Agreement or under its terms) and except as may be needed to comply with conditions prescribed by the FAA for the

purpose of transition to, and eventual operation under, a Single Operating Certificate, no Pilot of either Airline will fly as a crewmember on an aircraft in the fleet of the other Airline listed in Attachment A, or on an aircraft obtained from the represented value (as determined by a change order contained in a Supplemental Agreement to the original Boeing Purchase Agreement shown to the Association) of the orders or options of the other Airline as listed in Attachment A.

(ii) In the event that either Airline acquires aircraft not on Attachment A to replace aircraft on Attachment A, that aircraft shall be designated as a United Aircraft or Continental Aircraft based upon the aircraft being replaced. For purpose of this section, "replacement" means that the newly acquired aircraft can be matched, on a one-to-one basis, to an aircraft that has left or will leave the service of the Airline within six (6) months before or after the new aircraft enters service.

* * *

Section 5 Seniority List Integration

5-A. Integrated Seniority List. The seniority lists of United and Continental Pilots will be integrated pursuant to the Protocol attached hereto as Attachment B.

5-B. Acceptance of Integrated Seniority List. Subject only to the conditions stated below, the Parties will accept the results of the Seniority List Integration and incorporate them in the Joint Collective Bargaining Agreement.

(i) The Integrated Seniority List shall have only prospective effect. Specifically, and without limiting the generality of the foregoing, the following conditions shall apply:

a. There shall be no "system flush" whereby a Pilot may displace another Pilot from the latter's position as a result of the implementation of the Integrated Seniority List or the implementation or expiration of any condition or restriction; and

b. Pilots on furlough status at the time the Integrated Seniority List is implemented may not bump or displace pilots in active status at that time; and

c. Pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed qualification training for a new position (e.g., B-777 Captain or A-319 First Officer) may be assigned to the position for which they are being or have been trained, regardless of their relative standing on the Integrated Seniority List.

(ii) There shall be no requirement or obligation to compensate Pilots for work not actually performed or positions not actually held during the period for which compensation is sought, as a result of the Integrated Seniority List and its implementation.

(iii) The Integrated Seniority List shall not contain conditions or restrictions that substantially increase the costs associated with training above those normally

associated with the merger of two airlines.

5-C. Use of Integrated Seniority List.

Unless the Parties otherwise agree they will not implement the ISL for any purpose prior to the Operational Merger Date.

5-D. Information for SLI.

Subject to execution of confidentiality agreements and legal requirements, the Airline Parties will respond as quickly as possible to the Continental MEC and United MEC SLI Merger Committees' reasonable requests for employment or other data and information for purposes of the Seniority List Integration. Any data or information provided by one of the Airline Parties to one MEC's SLI Merger Committee shall be simultaneously provided to the other MEC's SLI Merger Committee.

* * *

Section 7 Transition Job Security Protections

7-A. Furlough. Effective as of the Merger Agreement Date, no Continental or United Pilot (except Pilots hired after the Merger Closing Date, including those employed pursuant to Section 7-B below) will be placed on furlough, if at all, until the passage of one year after the Operational Merger Date. Nothing in this paragraph shall be construed to prohibit or require the recall of any Pilot on furlough as of the Merger Agreement Date.

7-B. Job Opportunities.

(i) If either Continental or United intends to hire new Pilots, it will first offer employment to fill such positions in seniority order to Pilots on furlough from the other Airline. Acceptance or rejection of such an offer or failure to qualify will not affect a Pilot's recall rights or placement on the Integrated Seniority List (which shall be based upon his seniority position at the Pilot's originating Airline). A Pilot accepting an offer under this provision will be subject to the normal background and employment requirements of the employing Airline. The Pilot will be an employee of the employing Airline, within the applicable ALPA council for that Airline, but will not be required to serve or complete a probation period.

* * *

(iii) Pilots employed pursuant to this Section 7-B will exercise seniority for all purposes at the employing Airline in the seniority order of their originating Airline but junior to all Pilots who were on the seniority list of the employing Airline prior to the Merger Agreement Date. Upon implementation of the ISL Pilots will exercise seniority pursuant to their position on the ISL. All Pilots hired by the employing Airline after the Merger Agreement Date who are not Pilots employed pursuant to this Section 7-B will exercise their seniority for all purposes junior to all Pilots

who were on either seniority list prior to the Merger Agreement Date.

* * * * *

PROTOCOL AGREEMENT

05/15/2010

This Agreement is made and entered into by and between the United Airlines and the Continental Airlines Master Executive Councils of the Air Line Pilots Association, International, and their respective Merger Representatives, pursuant to Part 2C 1 of Merger Policy.

1. DEFINITIONS

- A. **"Agreement"** means this Protocol Agreement.
- B. **"UAL"** means United Air Lines, Inc.
- C. **"CAL"** means Continental Airlines, Inc.
- D. **"ALPA"** means the Air Line Pilots Association, International.
- E. **"UAL MEC"** means the UAL Master Executive Council, a unit of ALPA.
- F. **"CAL MEC"** means the CAL Master Executive Council, a unit of ALPA.
- G. **"Merger"** means a business transaction or the results of a business transaction of any kind in which VAL and CAL, and/or related corporate entities, and/or their separate airline operations will become a single business and operating entity for all purposes relevant to the pilots of each airline.
- H. **"Merger Policy"** means Section 45 of the ALPA Administrative Manual, effective as of MAD.
- I. **"Merger Announcement Date" (MAD)** means the date on which an agreement to Merge between VAL and CAL and/or their related corporate entities is publicly announced.
- J. **"Merger Closing Date" (MCD)** means the date the Merger announced on the MAD, as it may be subsequently modified, is consummated and the entity created by the Merger becomes the owner and/or operator, either directly or indirectly, of the airline assets of VAL and CAL. For the purposes of this Agreement, the seniority integration process and timeline are predicated on the Merger closing two hundred days after MAD.
- K. **"Integrated Seniority List" (ISL)** means a single pilot seniority list containing the names of the pre-merger VAL and CAL pilots integrated pursuant to the terms of this Agreement, including any accompanying Conditions and Restrictions.
- L. **"JCBA"** means the joint collective bargaining agreement negotiated with management and approved and ratified by the appropriate ALPA, VAL MEC and CAL MEC officials and/or members.
- M. **"Parties"** means the VAL MEC and Merger Representatives and the CAL MEC and Merger Representatives.
- N. **"TA Date"** means the date that CAL, VAL and ALPA reach a tentative agreement on a JCBA approved by the CAL and VAL MECs.
- O. **"Effective Date"** means the date this Protocol Agreement is approved by the CAL and VAL MECs and the President of ALP A.

2. PROCESSES FOR INTEGRATING THE UAL AND CAL SENIORITY LISTS AND COLLECTIVE BARGAINING AGREEMENTS

A. The Parties acknowledge that this Agreement constitutes an agreement pursuant to Part 2C 1 of Merger Policy for an alternative process to replace the seniority-integration decision process contained in Merger Policy. Except as specifically modified by this Agreement, Merger Policy shall apply to the creation of an ISL and a JCBA. The terms of Merger Policy, as modified by this

Agreement, shall be the exclusive process governing the integration of the UAL and CAL pilot seniority lists within ALPA in connection with the Merger, and each party hereby waives any right to invoke any provision of Merger Policy, including any request for a Process Implementation Date under Merger Policy, with respect to the process for determining the integration of the UAL and CAL pilot seniority lists in connection with the Merger.

B. Compilation, verification, certification and exchange of employment data shall commence promptly following the Effective Date, and, to the extent possible: (i) the UAL and CAL Merger Representatives shall compile employment data, independently review and verify such data, and deliver such data to individual pilots for confirmation within 20 days of the Effective Date; (ii) receive individual pilot protests within 30 days of the Effective Date; (iii) resolve individual pilot protests within 40 days of the Effective Date; and, (iv) certify and exchange seniority lists immediately following resolution of individual pilot protests. Such lists will show each pilot's name, employee number, seniority number, date of hire, and date of birth, as well as the pilot's seat, aircraft, domicile, and information reflecting each pilot's circumstances regarding the pilot's availability to engage in revenue flying (i.e., leave status, instructor status, management pilot status, medical/disability status (if twelve months or longer)), all as of the Effective Date, and the starting and ending dates of each of the pilot's furloughs, if any, other than strike-related furloughs. ALPA leaves, military leaves, personal leaves, FMLA leaves and sick leaves shall not be included. All means of electronic verification and exchange of employment data authorized by Merger Policy and any other methods as to which the UAL and CAL Merger Representatives may mutually agree shall be utilized in the employment data compilation, verification, certification and exchange processes. The certified seniority lists will thereafter be amended to reflect changes to the lists as of an agreed upon date closer to the time of the mediation and/or the arbitration referenced in Sections 2.F-2.K below.

C. The Constructive Notice Date shall be the MAD.

D. Upon MAD, the Merger Representatives shall commence direct negotiations on seniority integration.

* * *

H. The Arbitration Board shall decide the dispute if the Merger Representatives are unable to reach agreement on an ISL. . . .

* * *

J. The Arbitration Board shall establish rules of procedure and time limits consistent with this Agreement that, in its sole judgment, will permit it to issue an ISL no later than ninety days after MCD or as soon thereafter as is practicable.

K. Notwithstanding the time targets outlined above, nothing in this Agreement shall be construed to imply that the Merger Representatives, the Mediator or the Arbitrators should schedule any proceedings in a manner that might jeopardize the ability of either side, the Mediator or the Arbitrators to have a full and careful presentation and consideration of the evidence and arguments necessary and appropriate for the important matters at issue and to permit a reasoned and orderly development of a fair and equitable ISL.

L. Except as the parties may otherwise agree, in writing, the ISL shall not be used for any purpose until after MCD, nor shall the ISL be used except as a part of the JCBA.

M. Any disputes concerning the interpretation or application of this Agreement shall be resolved by the Arbitration Board.

* * * * *

Process for Updating Certified Lists as of April 1, 2013
(By Agreement of the Merger Committees dated March 1, 2013)

1. Certify corrections to the May 17, 2010, certified lists.
2. Make changes to the May 17, 2010, certified lists as of April 1, 2013 (e.g., Base/Equipment/Status, name changes, furlough recall dates, LTD status).
3. Remove individuals no longer on the certified lists as of April 1, 2013 (e.g., death, termination, retirement, resignation).
4. Add individuals to the certified lists as of April 1, 2013 (e.g., settlement agreements, reinstatements).
5. Certification and exchange of certified lists as of April 1, 2013, by respective Merger Committees no later than April 8, 2013.
6. Each Merger Committee will promptly advise the other Merger Committee of any additional changes to the May 17, 2010 and April 1, 2013 lists resulting from the discovery of clerical or other errors.
7. The Merger Committees will apply the “twelve months or longer” proviso contained in Section 2.B. of the Protocol Agreement only to pilots on “medical/disability status.”
8. Neither Merger Committee agrees that any item of the employment data set out in the other Merger Committee’s certified lists is correct.
9. The Merger Committees have not agreed on whether the May 17, 2010 list, the April 1, 2013 list or a list dated on any other date is the appropriate list on which the Board should build an integrated seniority list.
10. As stated in the Parties’ Protocol Agreement Section 2.C., the Constructive Notice Date shall be the Merger Announcement Date (May 3, 2010).

APPENDIX 2

Direct Examination Testimony of Captain James Brucia, Chairman, CAL Merger Committee

Combined Transcript See Tr. 1129, Ln. 15-21; Tr. 1130, Ln. 13-22; Tr. 1131, Ln. 1-2, 20-22; Tr. 1133, Ln. 1-15; Tr. 1134, Ln. 1-5, 20-22; 1135, Ln. 1-14; Tr. 1150, Ln 3-14; Tr. 1154, Ln 3-14, 20-22; Tr. 1156. Ln. 3-5; Tr. 1156, Ln. 10-17; Tr. 1157, Ln 5-21; Tr. 1158, Ln. 1-22; Tr. 1159, Ln. 17-22; See *also* CAL Exhibits. G-1 thru G-8.

* * * * *

Q All right. Tell us about what's in Exhibit 4 of your volume of materials, please.
A Exhibit 4 is the cover letter of an email I received from a gentleman named Ken Torrance, who is a Captain with us, and is the chairman of our system staffing committee -- Scheduling and Staffing Committee, SSC.

* * *

If you turn the page, you see a copy of the Continental system Bid 14-02. Let me just solve a little mystery right off the bat, why is it called 14-02. It just seems to be a number. Not really. 2014 February. 14 is the year. 02 is the month.

* * *

Q And tell us where it says base equipment status requirement for System Bid 14-02. What information has the Company displayed in its document here?

A Okay. This is the last page of the system bids that the CAL pilots have been very used to seeing for about 21 years at this point. . . . It has got the 14-02 min. We are going to get to that in a minute. I'm just pointing out to you that's what it says. It has got the 14-02 max. All right? . . . Look at the very bottom, the last row, All Total. All right? And go underneath that line, Min and Max, all right, the column Min and Max. The numbers are the same.

Q 4,936 and 4,936?

A Correct. ...What it tells you is your airline is doing one of two things. It's either growing or about to grow. Okay...Now, if you turn over to the next page.

Q What is the document, Captain Brucia?

A Up on top, it's the Category Staffing Requirements for Vacancies, effective 5-31-2013, June bid month. All right? This is out there. Right below that it says posted on 3-15, closes 3-25. And you have got the time frame that it covers, May, June, and July.

Q And which airline is this for?

A This is all for United. This is work product done by the United side of manpower planning. The previous page is work product accomplished by the CAL side of manpower planning.

* * *

And what you have asked me, Mr. Katz, is the function of doing the math between 2,062, subtracting that from 2,351, and that's the excess in terms of Captains that you don't need. You're staffing, but you don't need.

Q So that's 291?

A That's correct.

Q Captains that are not needed at United?

A That's correct. And if you go to the column just left of the 2,062, most of those 291 are there as active pilots already.

Q All right. And what inferences do you draw from these three pages that are contained in Exhibit 3, Captain Brucia, in regard to the construction of a fair and equitable merged list?

A We feel that Captains to Captains on the proper amount of Captains should be the way that list starts out. And in this case, 2,299 is the proper number of captains from each airline that bring comparable jobs to this merger.

Q And how would that translate into the construction of the top part of the list?

A .We believe it should be a one-to-one ratio of that number of Captains from both airlines coming together.

* * *

Q And so using the April 1, 2013 list, how do we propose to integrate the First Officers, Captain Brucia?

A After we have integrated the top Captain list on a one-to-one basis, again 2,299 on both sides, we now have to allocate how many First Officers go along with that for the next block to be integrated together. What we have done here is include the First Officers, realize that there are augmentation requirements.

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Q Captain Brucia, what's the overall augmentation ratio for the entire Continental fleet?

A We're using 1.271. And I think we're shortchanging ourselves a bit, but that's the way it's going to work out.

Q All right. And that's based on the OAG data for the 12 months preceding the April 1, 2013 date; correct?

A That's correct.

Q All right. And using the same reference of source material, what did Captain Butcher find was the First Officer augmentation ratio for the entire United Airlines fleet?

A For the United fleet, we gave them credit for 1.347 First Officers per Captain.

Q Okay. And then what's the calculation that occurs next?

A -- the way you arrive at your number, of course, is to take the 2,299 Captains we talked about, and I'm using the Continental line at this point, multiply that

times the 1.271, the overall augmentation ratio for Continental pilots, and that equals 2,922 First Officers for the Continental side.

Q So that augmentation ratio explains that the number of Captains generates 2,922 -- a need for 2,922 First Officers at Continental.

A That's correct, sir.

Q And does it work similarly for the United side of the equation?

A Exactly. The math -- the equation would be 2,299 United Captains, multiplied times 1.347, which is the overall augmentation ratio for the United First Officers, which results in a total number of United First Officers of 3,097.

Q Okay. Why we couldn't do this in our heads, the computers can ratio 2,922 to 3,097 and apply that to the people who are left after the Captain ratio is developed, and use that ratio to integrate the next group of people on the Continental/United seniority list.

A That's correct.

Q And so also, we're doing this on an entitlement basis, that is sometimes referred to as a stovepipe, on the assumption that the pilots, who are the first 2,299 on each list, would be the ones who could bid Captain, and whether they in actual practice will bid Captain doesn't matter, they're holding Captain entitlements. And so the top 2,299 in each group are -- they're together, followed by a ratio developed, as you described in Exhibit 5, applied to the next group of pilots.

A That's correct.

Q Okay. And then would the United furloughees be placed on the list below them?

A That's correct.

Q And then who following the United furloughees?

A The constructive notice pilots that came to this merger.

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