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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU)
 PILOTS COALITION, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 ALLIED PILOTS ASSOCIATION, *et al.*,)
)
 Defendants.)

Case No. 3:15-cv-03125-RS

**COMPENDIUM OF REPLY EXHIBITS IN
 SUPPORT OF DEFENDANT ALLIED
 PILOTS ASSOCIATION'S MOTION IN
 LIMINE TO EXCLUDE EVIDENCE**

Date: April 19, 2018
 Time: 1:30 p.m.
 Courtroom: 3 - 17th Floor
 Judge: Hon. Richard Seeborg

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- Exhibit 14. Excerpts from the reporter's transcript of the December 12, 2017 deposition of Wayne Klocke.
- Exhibit 15. Arbitrator John B. LaRocco's October 28, 2008 Supplemental Opinion and Award on Remedy in Arbitration FLO-0903 (Deposition Exhibit 1025)

EXHIBIT 14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

+ + + + +

IN THE MATTER OF:	:	
	:	
AMERICAN AIRLINES FLOW-THRU	:	
PILOTS COALITION, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No.
	:	3:15-cv-03125-RS
ALLIED PILOTS ASSOCIATION,	:	
et al.,	:	
	:	
Defendants.	:	
	:	
	:	

Tuesday,
December 12, 2017

Washington, DC

DEPOSITION OF:

WAYNE KLOCKE

called for examination by Counsel for the
Plaintiff, pursuant to Notice of Deposition, in
the law offices of the Air Line Pilots

Association Legal Department, located at 1625
Massachusetts Avenue, NW, when were present on
behalf of the respective parties:

APPEARANCES:

On Behalf of the Plaintiffs:

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ALSO PRESENT:

NHAT PHAM, Videographer

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1 P-R-O-C-E-E-D-I-N-G-S

2 12:50 p.m.

3 VIDEOGRAPHER: We're now on the
4 record. Here begins the video deposition of
5 Wayne Klocke, taken in the matter of American
6 Airlines Flow-Thru Pilots Coalition, et al. v.
7 Allied Pilots Association, et al. Today's date
8 is December 12, 2017. The time is 12:50.

9 This deposition is being held at 1625
10 Massachusetts Avenue, NW, Washington, D.C. Our
11 court reporter is Chad Jackson, on behalf of Neal
12 Gross. My name is Nhat Pham, also on behalf of
13 Neal Gross. Will Counselors please identify
14 themselves and state who you represent?

15 MR. ROSENTHAL: My name is Daniel
16 Rosenthal. I represent the Allied Pilots
17 Association.

18 MR. KATZENBACH: My name is
19 Christopher Katzenbach. I represent the
20 Plaintiffs.

21 MR. HOFFMAN: Steven Hoffman. I also
22 represent the Allied Pilots Association.

1 MR. MIGLIORE: I'm Marcus Migliore,
2 senior managing attorney with the Air Line Pilots
3 Association legal department.

4 VIDEOGRAPHER: Would the court
5 reporter please swear the witness?

6 WHEREUPON,

7 WAYNE KLOCKE
8 was called as a witness by Counsel for the
9 Defendants and, having been first duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ROSENTHAL:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Could you state and spell your last
16 name for the record?

17 A Wayne Michael Klocke, K-L-O-C-K-E.

18 Q Thank you. I will state, once again,
19 my name is Daniel Rosenthal. I am here on behalf
20 of the Allied Pilots Association, which is a
21 Defendant in this case. You are testifying today
22 pursuant to a subpoena, is that correct?

1 this proceeding, FLO-0903?

2 A Yes, I do.

3 Q What is your recollection of the --
4 again, focusing just on a merits decision here --
5 of what decision Arbitrator LaRocco reached in
6 this proceeding?

7 A He said that the TWA, LLC pilots who
8 were undergoing new hire training should be
9 treated as new hires. He ruled that they were
10 akin, in the same category as new hires, akin to
11 new hires, if I remember correctly.

12 Q What was the consequence of that for
13 the Eagle pilots?

14 A It meant that they had additional
15 rights generated by these TWA, LLC pilots. The
16 extent of those rights would have been determined
17 in the remedy phase and in any subsequent
18 arbitration.

19 Q Let me hand you the next document in
20 the series, which I think is 1025.

21 (Whereupon, the above-referred to
22 document was marked as Exhibit 1025

1 for identification.)

2 Q Take a look at this and let me know if
3 you recognize it.

4 A I do.

5 Q What is it?

6 A It's the supplemental opinion and
7 award on remedy. It's dated October 20, 2008.
8 It's also from Arbitrator LaRocco.

9 Q This is the decision from second phase
10 of FLO-0903, is that right?

11 A That's correct.

12 Q Your name is once again on the cover
13 as the representative of ALPA, is that correct?

14 A Yes.

15 Q Do you recall -- and feel free to
16 refer to the document if it refreshes your
17 recollection -- what ALPA's position was
18 regarding the remedy that Arbitrator LaRocco
19 should issue?

20 A Give me a moment, please. Without
21 referring to a decision, I don't really have a
22 recollection of what we sought because these are

C E R T I F I C A T E

This is to certify that the foregoing transcript

Deposition of: Wayne Klocke

In the matter of: American Airlines v ALPA

Before: US District Court

Date: 12-12-17

Place: Washington, DC

were duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings; and that I am neither counsel for, related to, nor employed by any of the parties to this action in which this deposition was taken; and further that I am not a relative nor an employee of any of the parties nor counsel employed by the parties, and I am not financially or otherwise interested in the outcome of the action.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

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EXHIBIT 15

In the Matter of the
Arbitration Between:

AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL,

and

AMERICAN EAGLE AIRLINES, INC.,

and

ALLIED PILOTS ASSOCIATION,

and

AMERICAN AIRLINES, INC.

Grievance Under Letter
Three/Supplement W

Case No. FLO-0903
(Former TWA Pilots)

SUPPLEMENTAL OPINION AND AWARD ON REMEDY

Hearing Date: April 24, 2008
Hearing Location: Sacramento, CA
Date of Supplemental Award: October 20, 2008

JOHN B. LaROCCO
Arbitrator
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Sacramento, CA 95811-3109

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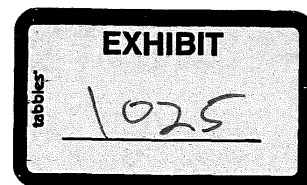
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FLO-0903

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL / AMERICAN EAGLE
AIRLINES, INC. / ALLIED PILOTS ASSOCIATION / AMERICAN AIRLINES, INC.

SUPPLEMENTAL OPINION AND AWARD ON REMEDY

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OPINION

I. INTRODUCTION

This Opinion and Award supplements the May 11, 2008 Opinion and Award concerning a dispute involving the four parties to Letter Three/Supplement W: The Air Line Pilots Association, International (ALPA), the Allied Pilots Association (APA), American Airlines, Inc. (AA), and American Eagle Airlines, Inc. (AE).

The May 11, 2007 Opinion and Award resolved the contract liability phase of this case. The Arbitrator remanded the case back to the properties for the parties to attempt to fashion a remedy while retaining jurisdiction over the dispute. Despite good faith efforts, the parties were unable to reach an agreement. Therefore, the Arbitrator granted the parties' request to exercise his retention of jurisdiction to adjudicate the appropriate remedy.

The four parties presented additional evidence at a hearing held on April 24, 2008. They filed opening and reply post-hearing briefs. The Arbitrator received the reply briefs on August 18, 2008 and the matter was deemed submitted.

At the April 24, 2008 hearing, the Arbitrator framed the issue as follows: Based on the Opinion and Award issued on May 11, 2007, what is the appropriate remedy within the context of that issue? [TR 187] The issue is stated broadly because the parties have a substantial disagreement regarding the scope of this Arbitrator's jurisdiction to fashion certain remedies. They also disagree on whether ALPA and AE waived their right to seek particular remedies. Later in this Opinion, the Arbitrator will state the subset of issues in great detail.

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II. BACKGROUND AND SUMMARY OF THE FACTS

Most of the pertinent facts and contract provisions are fully set forth in the May 11, 2007 Opinion and Award. For easy reference, Sections III.A through III.G of Letter Three/Supplement W are set forth below:

- A. At least one (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ Captains who are line pilots and who have completed their IOE at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority.
- B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A. above, due to a training freeze or other operational constraint, (see Paragraph III.J. below), such CJ Captain will be placed on the AA Pilots Seniority List and will count toward the number of new hire positions. The pilot's AA occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire training class referenced in Paragraph III.A. above. Such pilot's length of service for pay purposes, date of hire for pension purposes, and length of service for vacation accrual will be established in accordance with III.C. below. The number of such CJ Captains will not exceed the difference between the number of CJ Captains who are able to fill new hire positions at AA and the number of new hire positions which must be offered to CJ Captains in accordance with Paragraph III.A. above.
- C. A CJ Captain's (1) placement on the AA Pilots Seniority List (except as provided in Paragraph III.B. above which is only applicable for placement on the AA Pilots Seniority List in order to establish an AA occupational seniority date and number), (2) length of service for pay purposes, and (3) "date of hire" for pension purposes will be based on the date such pilot is entered on the AA payroll. Such pilot's length of service for vacation accrual will be based on the cumulative total of the pilot's service at AMR Eagle, Inc. and AA.
- D. If a CJ Captain is placed on the AA Pilots Seniority List per III.B. above, such CJ Captain will receive priority based on his AA seniority in filling a new hire position in the next new hire class, following release from a training freeze or other AMR Eagle, Inc. imposed operational constraint. Such CJ Captains will not count toward the number of new hire positions offered to CJ Captains at AMR Eagle, Inc., under Paragraph III.A. above.

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- E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete transition training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.
- F. An AMR Eagle, Inc. pilot may, not later than the completion of IOE for a CJ Captain position or at such time as the pilot is able to demonstrate hardship, elect to forfeit the opportunity to secure a position on the AA Pilots Seniority List as provided by this Supplemental Agreement. Such pilot will hereinafter be referred to as an "Eagle Rights CJ Captain," and will not be eligible for a future new hire position at AA which may otherwise become available under Paragraph III of this Supplemental Agreement. The existence of a hardship for this purpose shall be approved by the ALPA AMR Eagle MEC Chairman and the appropriate management official(s).
- G. A CJ Captain who is awarded a new hire position at AA will be issued the lowest seniority number at AA in the applicable new hire class, subject to AA's policy concerning the assignment of seniority numbers to new hire pilots who have previous service in other employee classifications. AMR Eagle, Inc. pilots will receive their AA seniority number in order of their seniority at AMR Eagle, Inc. [Joint Exhibit 1]

Other facts that were presented at the April 24, 2008 hearing herein and/or arose subsequent to May 11, 2007 may be relevant to the outcome of this case and are covered in the ensuing paragraphs.

On March 13, 2008, this Arbitrator issued an Opinion and Award in Case FLO-0106 which adjudged that AE flow-through pilots, who had acquired AA seniority numbers but had not yet transferred to AA, did not possess recall rights under Letter Three/Supplement W. Consequently, AA is not obligated to call them to AA service in seniority order. Rather, the recall right is governed by the APA-AA Working Agreement. In essence, the decision means that AE flow-through pilots come to AA, for the first time, exclusively by the operation of Letter Three/Supplement W. *Air Line Pilots Association*,

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American Eagle Airlines, Inc., Allied Pilots Association, and American Airlines, Inc.,
FLO-0106 (2008) (LaRocco, Arb.).¹

Shortly thereafter, on June 30, 2008, Arbitrator Richard Bloch adjudged that the ten year duration clause in Section VII.A of Letter Three/Supplement W did not extinguish flow-up rights for those AE pilots who, prior to May 1, 2008, had completed CJ Captain IOE and received AA seniority numbers. *Allied Pilots Association, Air Line Pilots Association, American Airlines, Inc., and American Eagle Airlines, Inc.* (2008) (Bloch, Arb.) (*Bloch* decision). Correspondingly, the *Bloch* decision held that AE pilots who had not acquired AA seniority numbers by May 1, 2008 do not gain a right to flow-up to AA due to the expiration of Letter Three/Supplement W.

The May 11, 2007 Award herein adjudged that some, but not all, of the former TWA pilots were equivalent to “new hire pilots” within the meaning of Section III.A of Letter Three/Supplement W.² The May 11, 2007 holding drew a distinction between former TWA pilots who had never trained or flown at AA and former TWA pilots who were integrated into active employment at AA, as a direct consequence of the acquisition, even if those pilots may have been subsequently furloughed from AA. However, the holding did not precisely identify each and every TWA new hire pilot. The parties now concur that there are 154 TWA new hire pilots. [Joint Exhibit 4, TR 187] AA began recalling these 154 TWA new hire pilots in 2007 and evidently the first group came to AA in the June 6, 2007 training class. [APA Exhibit 2, TR 312]

As of April 30, 2008, the AA seniority list evinced the following attributes. Pilots holding seniority from numbers one through 8870 remained actively employed at AA,

¹ This Opinion will refer to the FLO-0106 decision as the “recall decision.”

² The Arbitrator will refer to these pilots as “TWA new hire pilots.”

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i.e., they were never furloughed.³ [TR 248] Beginning on January 3, 2007, AA commenced offering recall opportunities to pilots starting with the pilot who currently holds seniority number 8871. [TR 311] Between January 2007 and April 2008, AA moved down the seniority list to offer recall to pilots through the pilot at number 10492, except AA skipped over AE flow-through pilots holding AA seniority numbers since they do not possess recall rights. As of April 2008, 388 AE flow-through pilots held AA seniority numbers between 8416 and 11876. These AE flow-through pilots are interspersed throughout this range with some below the large block of former TWA pilots integrated into the AA seniority list near the bottom of the list. [ALPA Exhibit 11]

As was related in the May 11, 2007 Opinion, pursuant to Supplement CC to the APA-AA Working Agreement, former TWA pilots were integrated into the AA seniority list on a 1:8 ratio and then a block of 1,156 pilots were added near the bottom of the list.⁴ Eighty-one former TWA pilots were integrated into the AA seniority roster below seniority number 9218 on a 1:8 basis. [APA Exhibit 2; TR 248-249] Of these 81 pilots, 56 accepted a proffered AA recall opportunity. Another 98 pilots from the block of 1,156 former TWA pilots also accepted recall. The 56 pilots plus the 98 pilots equals the 154 pilots that are deemed TWA new hire pilots for purposes of applying the May 11, 2007 Award. [APA Exhibit 2; TR 254]

Following the block of former TWA pilots on the AA seniority roster, there are 385 pilots who, according to Michael Mellerski, were hired or added to the list after April

³ The most junior pilot on the roster possessed seniority number 11927.

⁴ APA represented that only 455 of the 1,156 pilots were eligible to flow down to AE. [APA Exhibit 2]

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10, 2001.⁵ [TR 249] The 385 pilots include 92 pilots that were afforded reemployment rights pursuant to Supplement CC. [APA Exhibit 2; Joint Exhibit 3] Mellerski explained that these pilots were in AA training when the September 11, 2001 terrorist attacks precipitated their furlough before they had completed IOE. [TR 250] The 92 pilots were granted occupational seniority, even though they lacked recall rights inasmuch as they had not finished IOE. However, Mellerski conceded that there is not any meaningful difference between reemployment rights and recall rights. [TR 251] Mellerski recounted that AA and APA agreed to place these pilots on the AA seniority list because they had generated seniority numbers for AE flow-through pilots. [TR 251]

As of April 2008, more than 400 AE CJ pilots had elected flow-through status, but had not received AA seniority numbers. Thus, the aggregate population of AE flow-through pilots consists of 388 pilots who currently hold AA seniority numbers but have not yet shifted to AA, and the 400 plus AE pilots who opted for flow-through status but do not hold AA seniority numbers. For example, Captain Linder, an AE flow-through pilot who acquired an AA seniority number, has waited years to commence active employment at AA. Linder forewent other job opportunities based on his expectation that his AA seniority would permit him to soon transfer to AA. [TR 103-106 in FLO-0107]

The parties stipulated that between October 1999 and September 2001, 124 AE flow-through pilots completed their training freeze at AE and flowed-through to AA. These pilots attended AA training and began flying at AA. The parties further stipulated that, in accord with Section III.B of Letter Three/Supplement W, the 124 AE pilots

⁵ Mellerski is presently an AA First Officer on the 767 aircraft. He previously served on the APA Negotiating Committee in 1997 and the Mergers & Acquisitions Committee in 2001. [TR 227-228, 240]

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received AA seniority numbers as if they had attended training and filled new hire positions. They were granted the senior numbers in the class unless a trainee had prior service in another AA classification. New hire pilots not originating with AE or AA received the junior numbers in the class. After the 124 AE pilots served their lock-in at AE, AA assigned the pilots to the next scheduled training class. The parties stipulated that AA did not award an AA seniority number to another AE flow-through pilot when an AE flow-through pilot came to an AA training class after the expiration of the pilot's training freeze. [Joint Exhibit 5]

A portion of the controversy herein centers on the extent of the Arbitrator's authority to formulate a remedy as well as whether or not ALPA and AE may have waived some potential remedies. Both ALPA and AE seek a remedy which would require AA to provide seats in upcoming training classes to AE flow-through pilots who either: (1) already possess AA seniority numbers, or (2) acquire AA seniority numbers as a consequence of implementing a remedy herein. ALPA and AE contend that mandating AE pilots to attend training classes ahead of most or all former TWA pilots is an appropriate, make-whole remedy. APA and AA cited portions of the record and post-hearing briefs from the contract liability phase to support their arguments concerning lack of jurisdiction and waiver.

ALPA initiated the grievance herein on November 26, 2003. Items 4, 5, and 6 of the grievance read:

4. Former TWA pilots hired by AA fill "new hire positions" at AA within the meaning of Letter Three/Supplement W, III.B.
5. American Eagle CJ Captains who were otherwise qualified and eligible have not been awarded positions on the AA Pilots'

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Seniority list at the rate of one (1) out of two (2) new hire positions per new hire class at AA.

6. As a result of the facts stated herein, CJ Captains employed at American Eagle Airlines have been wrongfully denied positions on the AA Pilots' Seniority List. [ALPA Exhibit 2]

At the commencement of the hearing on the liability phase of this proceeding, the parties stipulated that the issue was whether former TWA pilots placed on the AA seniority list filled new hire positions and new hire classes within the meaning of Letter Three/Supplement W and if so, "...what is the appropriate AA seniority number remedy for AE CJ Captains covered by Letter 3, Roman III?" [TR 9]

In its opening statement during the liability phase, ALPA remarked that "...a new hire training class at AA generates employment opportunities for American Eagle CJ Captains in the form of ... AA seniority numbers." [TR 14] ALPA went on to state that it sought "a precedential ruling that when those pilots [TWA new hire pilots] are trained they meet the definition of attending new hire training classes and as a result they'll generate the numbers for the Eagle pilots." [TR 18] [Brackets added for clarification] ALPA claimed that the core of the Letter Three/Supplement W bargain was that, as AA added positions, AE pilots would share in AA's growth by receiving "...some of those seniority numbers so that they could eventually go to AA." [TR 19]

During its opening statement, AE posited that the term "new hire positions" in Section III.A must be read "to provide Eagle pilots with AA seniority numbers...." [TR 21-22] AE further stated that "...to deny Eagle pilots to flow -- to seniority numbers when American was hiring ... is unfair and was not intended by the drafters of the Letter 3." [TR 23]

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AA submitted during its opening statement that “there is, in fact, no basis for an interpretation for Supp W/Letter 3 that creates positions for Eagle pilots in the context of an integration of an air carrier or two air carriers....” [TR 23] AA also stated that the parties “never envisioned that such an acquisition would create flow-up rates [rights] for Eagle pilots.” [TR 28] [Brackets added for clarification.]

APA offered the following observation in its opening statement. “And I guess I’d want to emphasize that although ALPA is today speaking largely in terms of a right to seniority numbers...that’s a kind of secondary right under Supplement W. What Supplement W provides in Section III.A. is the right of CJ Captains to one out of every two new hire positions per new hire class at AA. That’s not just the seniority number, that’s a right to come to class and, you know, be hired at American and proceed.” [TR 32] APA also forecasted that one implication of sustaining ALPA’s position could be:

“...when American acquired TWA, half of the TWA pilots coming over in these transition classes, instead those slots belonged to Eagle pilots and the TWA pilots would be shot out the door if they were on the bottom of the list. So rather than a situation of a growing American where Eagle was coming into slots, you’re literally talking about a situation where if Eagle pilots had been entitled to half the positions in the transition classes, then – and we only had a certain – we only had the aircraft that was brought over that we’re talking about here – then you’re talking about having to furlough what are now American pilots out the door to make room for Eagle pilots to come up. [TR 36-37]

The following excerpts appeared in ALPA’s Post-Hearing Brief during the liability phase of this dispute. ALPA argued that if former TWA pilots “accept recall and are trained, they will continue to be part of AA’s growth and, as such, they must generate AA seniority numbers for the Eagle CJ Captains who are waiting to receive them.” [ALPA Post-Hearing Brief at p.3] ALPA submitted that AE flow-through pilots “...should have received AA numbers as a result of AA hiring and would subsequently

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continue to accrue AA seniority..." because the "intended" benefit for AE flow-through pilots was "the addition to the AA seniority list...". ALPA asserted that: "The result proposed by ALPA herein is a balanced approach that does not impose any unreasonable burden upon either AA or the APA. AE pilots would receive the AA seniority numbers they rightly deserve, but no AA pilots would be furloughed or displaced as a result of the issuance of these numbers." [ALPA Post-Hearing Brief at p.35]

In its Post-Hearing Brief during the liability phase, AE implored that, if AE prevails, the Arbitrator should remand the matter "...to the parties for discussion of the appropriate AA seniority number remedy." [AE Post-Hearing Brief at p.23]

APA wrote in a footnote in its post-hearing brief that: "If former TWA pilots are deemed to fill 'new hire' positions in 'new hire' classes as they transition into AA from TWA LLC, then Section III.A of Supp. W/Letter 3 clearly mandates that at least one out of every two of those positions be offered to CJ Captains at Eagle." APA then argued that such a result is "...so implausible that only the strongest evidence of the parties' intent would suffice to establish it." [APA Post-Hearing Brief at p.1]

III. THE POSITIONS OF THE PARTIES

A. The Position of the Air Line Pilots Association

ALPA seeks a remedy that would grant AA seniority numbers to virtually all, if not all, AE flow-through pilots and bring the AE flow-through pilots, who possess and/or acquire AA seniority numbers, into AA training classes.

While ALPA's computations are not entirely clear, it counts the number of TWA new hire pilots in each class from July 3, 2007 through June 4, 2008 as a basis for its

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formula on generating seniority numbers.⁶ For example, the two TWA new hire pilots in the July 3, 2007 class generate 184 AA seniority numbers for AE flow-through pilots because there are 182 AE flow-through pilots senior to the two junior TWA new hires and, by extrapolation, a total of 366 (182 + 184) AE pilots would be in a hypothetical training class to achieve the proper ratio required by Sections III.A and III.D of Letter Three/Supplement W. Examining the August 1, 2007 class as another example, 31 seniority numbers are generated by the nine TWA new hire pilots who attended that class because there are 22 remaining AE flow-through pilots senior to the TWA new hires. Using the same calculation, the total number of AE pilots needed in a hypothetical class to obtain the proper ratio is 53 (22 + 31).⁷

ALPA also seeks a readjustment of the AA seniority list to prevent AE pilots who acquire seniority numbers under this remedy from attaining greater seniority than many AE pilots who already possess an AA seniority number. Consequently, the 93 AE pilots who hold seniority numbers junior to the TWA new hire pilots must move up the AA seniority list so that their numbers are approximately at or more senior to the TWA new hire pilots. The logical solution is to award 93 seniority numbers generated by the first 93 TWA new hire pilots to the 93 AE pilots who previously received AA numbers because the previously awarded numbers are improper.

Section III.A of Letter Three/Supplement W provides that 50% of all new hire positions in any new hire class must be offered to AE CJ Captains who completed IOE and elected flow-through status. Once an AE pilot acquires an AA seniority number, the

⁶ The number of TWA new hire pilots in these classes ranged from a low of two in the first class to a high of 26 in the April 16, 2008 class.

⁷ ALPA submitted a table on page 25 of its Opening Post-Hearing Brief illustrating its proposed remedies.

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AE pilot will either transfer to AA and begin training in a new hire class or be held back at AE to serve a training lock-in. If the latter occurs, the AE pilot is given top priority to transfer to AA after the pilot is released from the AE lock-in per Section III.D of Letter Three/Supplement W. When this AE pilot later transfers to AA, the AE pilot occupies a position in an AA training class which would have otherwise been filled by a conventional new hire pilot. Nevertheless, the 50% ratio in Section III.A continues to apply so that half of the positions in any class attended by the AE pilot coming to AA under Section III.D must be offered to AE flow-through pilots. Pursuant to the express language of Section III.D, the AE pilot coming to AA after the lock-in does not count as a new hire pilot so that pilot must generate another AA seniority number.⁸ For example, suppose AA needs to hire 50 pilots. Initially, the hiring process will be half and half; that is, 25 of the pilots will be conventional new hire pilots and 25 will be AE flow-through pilots. If the 25 AE pilots are withheld by AE, due to a training freeze, AA needs to bring in 25 more conventional new hire pilots to fill the training class. Of the 50 new hire pilots in training at AA, none are AE flow-through pilots. However, the AA seniority list is increased by 75 pilots since the 25 AE pilots receive AA seniority numbers along with the 50 conventional new hire pilots. If, several months later, AA needs to hire 50 more pilots, AA will establish a training class for 50 new hire pilots. Assuming the prior 25 AE pilots are released from the AE training freeze, those 25 pilots are afforded priority in filling the new hire class. They occupy 25 of the 50 seats in the class. However, AA must still abide by the 50% ratio in Section III.A. To satisfy the compulsory ratio, AA must offer the remaining 25 training class seats to the next 25 AE

⁸ Conversely, under Section III.B, the AE pilot coming to AA counts as a new hire pilot and does not generate another AA seniority number.

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pilots who have opted for flow-through status.⁹ Now, AA has hired 100 pilots: 50 are conventional new hires and 50 are AE flow-through pilots which complies with the minimum ratio specified in Section III.A of Letter Three/Supplement W. Unless the training classes are filled as described above, AE pilots would never receive the guaranteed allotment of one out of every two new hire positions at AA. APA's interpretation of Section III.A would result in a one out of three ratio because it disregards the operation of Section III.D.

Each AE flow-through pilot is entitled to the most senior number in each class after any new hire pilots who have prior service in another AA classification. In other words, the conventional new hire pilots obtain the seniority numbers immediately below the seniority numbers assigned to the AE flow-through pilots. The parties stipulated that, in the past, 124 AE flow-through pilots received seniority numbers higher than other trainees, except for AA employees with prior AA service. In this case, the former TWA new hires are equivalent to conventional new hire pilots. So, each AE pilot acquiring an AA seniority number must be more senior than the pilot's TWA new hire pilot counterpart.

Prior to 2001, an insufficient number of AE pilots had completed CJ IOE to take advantage of the full potential of the number generation percentage in Sections III.A and III.D. If more AE pilots had entered AA new hire classes after serving the training freeze, they would have generated additional AA seniority numbers for other AE flow-through pilots who had completed IOE and elected flow-through status.

⁹ Regardless of whether these next 25 flow-through pilots are withheld at AE, they acquire AA seniority numbers.

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To provide AE pilots with seniority numbers above the TWA new hire pilots, the AA seniority list must be reordered to place the AE pilots and the TWA new hire pilots in their rightful positions. This Arbitrator is authorized to adjust the AA seniority list to achieve the appropriate remedy. *Brotherhood of Locomotive Engineers and Trainmen v. CSX, Inc.*, 455 F.3d 1313 (11th Cir. 2006) The Arbitrator is empowered to modify a seniority list to harmonize the list with the provisions of Section III of Letter Three/Supplement W. *LaRocque v. R.W.F., Inc.*, 8 F.3d 95 (1st Cir. 1993). The AE flow-through pilots who have AA numbers and who will receive AA numbers must be properly inserted to their rightful place on the AA seniority roster because APA and AA failed to place the TWA new hire pilots at the bottom of the seniority list. Consequently, the AE flow-through pilots must obtain AA seniority numbers immediately senior to each of the TWA new hires in each respective training class. However, to maintain relative AE seniority, 93 AE flow-through pilots previously afforded AA seniority must move up the roster so that junior AE flow-through pilots do not leapfrog over them. Contrary to AA and APA's position, the 93 pilots are not being provided with underserved seniority. Rather, they are simply being reallocated to their rightful position on the AA seniority roster.

Reordering and adjusting the AA seniority list is the only reasonable remedy because APA and AA inflicted substantial harm on AE pilots when they integrated the TWA new hire pilots into the AA seniority roster without negotiating with ALPA. ALPA had a real interest in the terms and conditions of Supplement CC because ALPA represented a large group of pilots possessing AA seniority numbers. Many pilots, like Captain Linder, have patiently waited for their chance to pursue their career at AA, an

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opportunity that now must be offered to them. Furthermore, Item 3 in Letter PP to the AA-APA working agreement provides:

Recognizing that this is the first large scale implementation of the flow back provisions of Supplement W, and recognizing that the four parties may have differing interpretations of the correct implementation, this agreement may be modified from time to time based on the outcome of the dispute resolution procedures of Supplement W. In any case, the implementation of Supplement W reflected in this letter, as modified, if necessary, to accommodate such future rulings, fulfills any and all obligations concerning Supplement W arising from the parties' May 1, 2003, New Collective Bargaining Agreement.

Thus, APA and AA fully anticipated that they may have to adjust the AA seniority roster to comply with the judgments issued by arbitrators interpreting and applying the provisions of Letter Three/Supplement W.

This Arbitrator has jurisdiction to award training class seats to AE flow-through pilots holding AA seniority numbers. Section 2, Second, as well as Section 2, Eleventh and Section 3, First, of the Railway Labor Act provides that an Adjustment Board has liberal authority to adjust disputes between "a carrier or carriers, and its or their employees...." 45 U.S.C. § 151, 152. When TWA new hire pilots attend new hire classes, AE pilots have indisputable priority, pursuant to the express language in Section III.D, to go to AA. ALPA never waived its right to seek seats for AE pilots in training classes. Indeed, ALPA could not intentionally relinquish a right until the right matures which did not occur until the Arbitrator issued the ruling in the liability phase of this case. At the time this case was originally litigated, none of the parties knew when (or if) a new hire class may be convened and no party knew that AA would deny AE pilots seats in those classes. ALPA cannot waive an unknown right.

In conclusion, ALPA urges the Arbitrator to adopt its proposed remedy.

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B. The Position of American Eagle Airlines, Inc.

AE flow-through pilots have seniority numbers both senior and junior to the 154 TWA new hire pilots that AA has recalled in 2007 and 2008. These 154 pilots must generate AA seniority numbers for AE flow-through pilots on a one-to-one basis in accord with Section III.A. In addition, Section III.D grants AE pilots priority to attend new hire training classes after serving their training freeze. Consequently, before any TWA new hire pilot attends an AA training class, the 388 AE flow-through pilots with AA seniority numbers, who have completed their AE training freezes, are entitled to go to AA training classes.

Section III.A expressly provides that each of the 154 TWA new hire pilots must generate a seniority number for an AE flow-through pilot who has not yet received a seniority number. Mellerski admitted that if AE pilots could attend a class without having to serve a training freeze, half of the class would be populated with flow-through pilots and the other half of the class with new hire pilots. Therefore, Section III.A contains a one to one ratio (154 to 154) for seniority number generation.

While AE does not take a position on what specific numbers shall be afforded to each of the 154 AE flow-through pilots, AE observes that Section III.G entitles the AE pilots to receive the most senior numbers in a new hire class. This seniority assignment provision is consistent with how AE flow-through pilots received AA seniority numbers after they completed CJ IOE between October 1999 and September 2001. The AE pilots only received seniority numbers lower than a trainee who had service in another AA classification. The remaining new hire pilots were given the junior numbers in the training class.

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The priority given to AE flow-through pilots in Section III.D cannot be disputed. APA wants to ignore the Arbitrator's ruling that TWA pilots are filling new hire positions. The holding on the liability phase of the case necessarily implicates Section III.D. Therefore, AE flow-through pilots must now be given priority in filling the new hire positions in all upcoming AA new hire classes.

There is not any past practice showing the relationship between Section III.A and Section III.D inasmuch as the 1999-2001 practice was limited to AE pilots who could not immediately attend a new hire class. Beginning in 2007, AA improperly filled new hire positions with TWA new hire pilots, even though AE flow-through pilots were available to come to AA because they had completed their training freezes. As a result, Section III.B is inapplicable since that provision only applies if the AE flow-through pilot is not relegated to a training freeze.

The holding in the recall decision need not be considered in fashioning the remedy herein. In that case, this Arbitrator decided that AE pilots lacked a right of recall under the express provisions of Letter Three/Supplement W, but did not justify the decision on the notion that recalling AE pilots might disrupt AA training or change the AA seniority list. Therefore, nothing in the recall decision supports AA's and APA's position that AE flow-through pilots must wait to attend new hire classes held after all the TWA new hire pilots attend classes.

Also, Section III.D does not contain any limit on the number of AE pilots that can occupy a particular AA training class. Therefore, the 154 AE pilots, who will receive AA numbers, were entitled to be trained at the same time as the 154 recalled TWA new hire pilots.

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Neither AE nor ALPA waived their right to seek a remedy giving AE flow-through pilots seats in AA training classes. APA unreasonably claims that AE and ALPA were asking for a remedy without a right, *i.e.*, an abstract seniority number. Obtaining an AA seniority number without concrete benefits would completely undermine the flow-through provisions of Letter Three/Supplement W. It is true that AE did not seek retroactive relief, but that does not bar AE from seeking prospective relief in the form of providing AE pilots with the benefits attached to their AA seniority number. Moreover, APA's waiver claim is paradoxical inasmuch as APA argued, during the liability phase of this case, that sustaining the grievance would give AE pilots one-half of all positions in a merger. If AE had waived its right to claim a training class remedy, APA would not have used the potential remedy to try to defeat the merits of the grievance.

A Board of Adjustment under the Railway Labor Act has mandatory and exclusive jurisdiction over minor disputes. 45 U.S.C. § 151, et seq. The Act does not leave any room for a private resolution scheme, as advanced by APA. Moreover, Section 1.C of Letter Three/ Supplement W expressly provides that Sections III.A and III.D modify pre-existing collective bargaining agreements. This arbitral proceeding, under the auspices of the Railway Labor Act, must resolve the entire dispute because it is the exclusive forum for resolving all aspects of this grievance. *Cf. Gunther v. San Diego and Air Line Eastern Railway*, 352 U.S. 257 (1965); *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994).

Finally, if the Arbitrator does not decide the issue of whether AE flow-through pilots are entitled to immediately go to AA training classes, the parties will be forced, unnecessarily, to expend substantial resources. If the dispute is left unresolved, the

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controversy could end up before another arbitrator who does not understand the complexities and consequences of the original May 11, 2007 Opinion and Award.

In sum, AE seeks a remedy encompassing the generation of 154 seniority numbers for AE flow-through pilots and seats in upcoming AA training classes for AE flow-through pilots who currently hold and will acquire AA seniority numbers.

C. The Position of the Allied Pilots Association

AE flow-through pilots must receive one AA seniority number for every two of the 154 TWA new hire pilots who were recalled to AA prior to May 1, 2008. The 154 pilots generate 77 AA seniority numbers for AE flow-through pilots. The 77 seniority numbers, with the flow-through pilots, are added to the bottom of the AA seniority list.

Since the inception of Letter Three/Supplement W, AE flow-through pilots have been awarded seniority numbers at the bottom of the AA seniority list at the rate of one number for every two new hire pilots. As Mellerski declared, a new hire class consisting of 10 pilots triggers an allotment of five slots to AE flow-through pilots. Therefore, a class of 10 new hire pilots generates five seniority numbers for the AE pilots, that is, a two to one ratio. An AE pilot who is called to an AA training class after serving a training freeze does not generate additional seniority numbers. An AE flow-through pilot can only accept one new hire position. Therefore, once the AE pilot accepts the position pursuant to Section III.B, the same pilot cannot accept a separate new hire position under Section III.D. In other words, the AE pilot who comes to AA under Section III.D moves to AA more akin to a recalled pilot than a new hire pilot. Moreover, the parties stipulated that AA did not provide additional seniority numbers for AE flow-through pilots when an

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AE pilot came to an AA training class after finishing the AE training freeze during the period from 1999 to 2001.

Section III.G expressly provides that the AE pilots are given the lowest seniority number at AA. There is not any precedent for awarding AE pilots a seniority number anywhere on the seniority list except at the bottom. ALPA unreasonably wants to slingshot 93 AE pilots up the AA seniority list simply because their seniority numbers are presently junior to furloughed TWA LLC pilots. ALPA conveniently ignored these 93 pilots during the liability phase herein. Similarly, ALPA ignored the 700 AA pilots at or near the bottom of the AA list. The parties wanted a transparent operation of seniority in Letter Three/Supplement W to avoid duplicating the experience at another air carrier where pilots sometimes jumped ahead of other pilots when moving from one carrier to another. (*Bloch* decision) ALPA's proposed remedy would allow many AE pilots to catapult past existing AA pilots who, for many years, have understood where they rank on the seniority roster. In other words, all pilots on the AA roster became vested with their relative position on the AA seniority roster. ALPA's proposed remedy undermines the transparency concept and could result in unwanted and unfortunate consequences. Put simply, ALPA has not cited any reliable precedent for moving pilots into seniority slots already occupied by other AA pilots. Nothing in the language, the bargaining history, or the past practice under Letter Three/Supplement W supports ALPA's absurd request to engage in a wholesale rearrangement of the AA seniority list. Item 3 of Letter PP only refers to a possible future modification of Letter PP. It does not reference the APA-AA Working Agreement or Supplement CC. To reiterate, placing AE flow-through pilots in the middle of the AA seniority list would likely create a great deal of conflict

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and angst among pilots. Finally, Section 13.C of the APA-AA Working Agreement provides that a pilot's relative position on the AA seniority list cannot be changed for any reason.

ALPA voluntarily relinquished any right to seek a remedy beyond granting AE flow-through pilots 77 additional seniority numbers.

When it filed the grievance and argued its case, ALPA deliberately omitted any claim concerning when AE pilots should come to AA for training. ALPA made a tactical decision. ALPA fully realized that if it had aggressively claimed seats in training classes for AE flow-through pilots, the resulting disruptions would weigh heavily against granting its grievance. Now, after receiving a favorable decision in the liability phase, ALPA belatedly wants to inject a new claim into the remedy phase which would impermissibly delay the recall of furloughed TWA pilots. Thus, the Arbitrator lacks jurisdiction to determine when AE flow-through pilots should attend AA training classes. *Continental Airlines, Inc. v. International Brotherhood of Teamsters*, 391 F.3d 613 (5th Cir. 2004), *187 Concourse Assocs. v. Fishman*, 399 F.3d 524 (2d Cir. 2005). Moreover, in the recall decision, this Arbitrator unequivocally ruled that being awarded a seniority number, and filling a training slot, are distinct occurrences under Letter Three/Supplement W.

Section III.B of Letter Three/Supplement W controls the issuance of seniority numbers, but does not give AE pilots any immediate right to attend an AA training class. Sections III.A and III.B only guarantee a right for AE pilots to eventually come to AA. The plain language of Sections III.A and III.B segregates the offer of a new hire position from occupying the position. Permitting AE pilots to attend AA training classes prior to

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completion of the recall, down the entire AA seniority list, would be directly contrary to the recall decision. Stated differently, allowing AE pilots to attend AA classes in the midst of the recall would nullify the recall decision that found that AE pilots, who held AA seniority numbers, have no right of recall under Letter Three/Supplement W.

ALPA proposes a convoluted, confusing, and contradictory remedy which is predicated on erroneous facts and fallacious assumptions. ALPA wrongly asserts that TWA LLC pilots were integrated into the AA seniority roster with the motive of denigrating the flow-through rights of AE pilots. Rather, at the time of the acquisition, all parties anticipated that AA would provide full employment for all TWA pilots. AA and APA did not act arbitrarily by excluding ALPA from negotiations over Supplement CC, since ALPA only represented pilots on the AA list who were placeholders in terms of possessing AA seniority. The pilots were still at AE. Moreover, none of the TWA pilots were stapled to the bottom of the list. None were immediately furloughed when AA acquired TWA. While the economic downturn forced AA to shrink before the TWA transition was completed, there were and are AA pilots junior to all the former TWA pilots.

Since the equities favor the TWA pilots, the Arbitrator should reject ALPA's proposed remedy which compels the TWA pilots to suffer substantially more inequities. During the long economic downturn, many TWA pilots were furloughed to the street, while the AE pilots reaped great rewards (continued employment) by flying commuter jets. Moreover, many of these TWA pilots could not avail themselves of the furlough protection provided by Letter Three/Supplement W because they were ineligible to flow down to AE.

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In conclusion, the APA proposes that the remedy be the generation of 77 AA seniority numbers for AE flow-through pilots and those 77 pilots be added to the bottom of the AA seniority roster.

D. The Position of American Airlines, Inc.

AA's primary objectives are to avoid both operational disruptions and turmoil on the AA seniority list.

The *Bloch* decision held that 388 AE pilots, who have received seniority numbers, remain eligible to flow-up to AA, while 438 AE flow-through pilots, without AE seniority numbers, are no longer eligible to flow-up to AA. The *Bloch* decision did not address the fate of two other groups affected by the expiration of Letter Three/Supplement W: pilots who already flowed through from AE and furloughed AA pilots who flowed down to AE. The remedy herein must be commensurate with the *Bloch* decision.

AA does not take a firm position on how many AA seniority numbers should be generated for AE flow-through pilots, albeit the number must comply with the ratio specified in Letter Three/Supplement W.

Regardless of the number of seniority numbers generated, the AE flow-through pilots must be assigned AA seniority numbers that are below the most junior pilot on the AA seniority list. There is not any precedent for assigning a new seniority number to a pilot except at the bottom of the AA seniority list. Dovetailing seniority only occurs in a merger. It would be nonsensical to provide seniority numbers to AE flow-through pilots that would shoot them up the AA seniority list ahead of hundreds of AA pilots and even many AE pilots who have already received AA seniority numbers.

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ALPA proposes a confusing and complicated remedy that ignores the fact that the TWA, LLC pilots were integrated into the AA seniority roster as a result of a merger. They were not placed at the bottom of the seniority roster like new hires. The AE pilots are new hires and so, they must take seniority numbers junior to any existing AA seniority number.

AE flow-through pilots cannot be placed in the next AA training class without overruling the recall decision. Allowing AE pilots to come to a current AA training class would be tantamount to providing them with the right of recall. In accord with the recall decision, AA must exhaust the recall list before placing AE flow-through pilots in an AA training class. Pursuant to Section III.D of Letter Three/Supplement W, AA is not filling a new hire position until the recall is finished. The ruling in the May 11, 2007 Award only held that TWA LLC new hire pilots are equivalent to new hires solely for the purpose of generating AA seniority numbers. AE pilots may only come to an AA training class after AA recalls all pilots furloughed from both AA and TWA LLC.

Thus, the Arbitrator should reject ALPA's proposed remedy.

IV. DISCUSSION

A. Subset of Issues.

The broad remedial issue can be segmented into several specific issues that must be consecutively addressed to determine the appropriate remedy flowing from the adjudication of the issue on the merits. The specific issues are:

- (1) What is the exact quantum of AA seniority numbers that come into existence as a result of AA recalling and training the 154 TWA new hire pilots?
- (2) What seniority numbers are provided to AE flow-through pilots who acquire AA seniority numbers pursuant to Issue (1)?

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- (3) What shall be the effective date of the seniority numbers acquired and assigned to AE flow-through pilots pursuant to Issues (1) and (2)?
- (4) Does the Arbitrator have jurisdiction to adjust or rearrange the AA seniority roster as consequence of or to implement the answer to Issue (2) above?
- (5) Does the Arbitrator have the jurisdiction to decide whether AE flow-through pilots were entitled to attend AA training classes ahead of TWA new hire pilots and/or whether AE flow-through pilots have a priority to attend upcoming AA training classes?
- (6) If the answer to Issue (4) is "yes", does the generation of additional seniority numbers for AE flow-through pilots necessitate an adjustment in AA relative seniority for any AE flow-through pilot who acquired an AA seniority number prior to the application of the remedy herein?
- (7) If the answer to Issue (5) is 'yes', did ALPA and AE waive the right to request a remedy that includes awarding AE flow-through pilots seats in AA training classes?
- (8) If the answer to Issue (5) is 'yes', and the answer to Issue (7) is 'no', when are AE flow-through pilots, who possess an AA seniority number, entitled to attend AA training classes?
- (9) If the answer to Issue (5) is 'yes' and Issue (7) is 'no', does the attendance of AE flow-through pilots in AA training classes generate additional AA seniority numbers for other AE pilots who have completed CJ IOE and opted for flow-through status?

B. Issue No. 1.

The first issue is how many AA seniority numbers are generated for AE flow-through pilots, who currently do not possess a seniority number, predicated on the four parties' concurrence that there are 154 TWA new hire pilots as described by the May 11, 2007 Award.

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Seniority number generation is controlled by Section III.A of Letter Three/Supplement W.¹⁰ When AA needs to hire pilots, it establishes a new hire training class. Section III.A clearly provides that a minimum of one out of every two positions in the class “will be offered” to CJ Captains who have elected flow-through status. Put simply, if AA establishes two new hire positions, a minimum of one of those positions must be offered to an AE flow-through pilot.

Next, the Section III.A ratio must be hypothetically applied to the 154 TWA new hire pilots. The best way to emulate what should have occurred is to suppose that AA needed 154 pilots and thus, convenes a training class with 154 positions. Because of the Section III.A ratio, the 154 positions cannot be offered, at least not initially, to the 154 TWA new hire pilots. Instead, one-half, or 77, of the new hire positions must be offered to AE flow-through pilots. Absent a training freeze, the 77 AE flow-through pilots acquire AA occupational seniority numbers, per Sections III.C and III.G, and attend the training class with 77 TWA new hire pilots. After this class completes training, there remains 77 TWA new hire pilots who are untrained. To bring them into active employment, AA would have to convene a training class with double the number of new hire positions (another class of 154 trainees) to satisfy the 1 out of 2 ratio mandate of Section III.A. If AA convenes a second training class of 154 new hire positions, 77 will be offered to AE flow-through pilots who will acquire AA seniority numbers. Now, the supply of former TWA new hire pilots has been exhausted. It is easy to calculate that the 154 TWA new hire pilots generated 154 AA seniority numbers for AE flow-through pilots. Since it takes 308 new hire AA positions to guarantee the “hiring” of the 154

¹⁰ Section III.G is the technical provision that actually grants the AE flow-through pilot an AA occupational seniority date and number.

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TWA new hire pilots, the same number of AE flow-through pilots will acquire AA seniority numbers.

The AE training freeze is inapplicable to this simulation because all of the AE pilots who may be awarded AA seniority numbers have long ago completed any AE training lock-in. They are immediately available, in a hypothetical sense, to occupy an AA new hire position in a new hire class. As a result, Section III.D is irrelevant to generating seniority numbers for AE pilots until or unless AE pilots, who already hold AA seniority numbers, come to an AA training class, pursuant to the priority expressed in Section III.D. The possible generation of additional AA seniority numbers by the operation of Section III.D is Issue No. 9.

Therefore, the 154 TWA new hire pilots generate 154 AA seniority numbers for AE flow-through pilots. These AA seniority numbers shall go to the 154 most senior AE flow-through pilots who do not currently possess an AA seniority number in accord with the second sentence of Section III.G of Letter Three/Supplement W.

C. Issue No. 2.

The second issue is what are the actual seniority numbers that are granted to the 154 AE flow-through pilots obtaining AA seniority numbers? ALPA argues that the seniority numbers must be senior to the 154 TWA new hire pilots because AE pilots are given the higher numbers in each training class, *i.e.*, greater seniority than conventional new hire pilots.

The placement of AE pilots on the AA seniority roster is governed by Section III.G. The applicable language specifies that AE flow-through pilots receive the "lowest" seniority numbers at AA. Without a doubt, the lowest seniority number is at the bottom

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of the AA seniority list. Thus, Section III.G expressly requires that the 154 AE pilots, who are acquiring AA seniority, obtain numbers below the number 11927, which was, as of April 2008, the last number on the roster.

Nevertheless, an ambiguity arises with respect to the literal application of Section III.G because the TWA new hire pilots were already afforded AA seniority numbers as a result of the seniority integration set forth in Supplement CC. In a perfect application of Section III.G, the TWA new hire pilots would have the seniority number in each training class lower than the new seniority numbers granted to the AE flow-through pilots. If ALPA's requested remedy is appropriate, then either the 154 TWA new hire pilots must move below the 154 AE pilots acquiring seniority numbers or the 154 AE pilots must be inserted onto the seniority list one number in front of each TWA new hire pilot counterpart. Both these outcomes are inappropriate because they are contrary to a past practice and could denigrate the seniority ranking of many AE pilots who already acquired AA seniority numbers. Consequently, when a TWA new hire pilot is recalled, the pilot is treated as a new hire for purposes of a Section III.A offer of a position to generate a seniority number, but the recall, itself, does not affect the relative standing of the former TWA pilot's seniority. The past practice prior to 2001 amply demonstrates that all AE flow-through pilots were placed at the bottom of the AA seniority list. ALPA has not cited any precedent which provides a compelling justification for deviating from this past practice. Next, granting the AE flow-through pilot seniority numbers above the 154 TWA new hire pilots would vest them with seniority greater than some current AE flow-through pilots who have AA numbers. Such a result would not only directly contravene the last sentence of Section III.G, but also inequitably dilute the value of AA

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seniority held by AE pilots, who already hold AA seniority numbers. They would be out of seniority order in violation of the second sentence of Section III.G. ALPA proposes adjusting the seniority of these other AE pilots, which is Issue No. 6, but there is nothing in Section III.G that even hints that pilots, upon receiving an AA seniority number, are placed on the AA roster above AE pilots who earlier acquired AA seniority numbers.

Therefore, the 154 seniority numbers shall be the next 154 numbers after the most junior pilot on the AA seniority list unless the answer to Issue No. 6 mandates an adjustment in the AA seniority list.

D. Issue No. 3.

Because the contract violation occurred while Letter Three/Supplement W was still in effect, the 154 AE pilots shall acquire their AA seniority numbers retroactive to April 30, 2008 so that they are eligible to flow-up to AA as determined by the *Bloch* decision.

E. Issue Nos. 4 and 5.

In the May 11, 2007 Opinion and Award, the Arbitrator encouraged the parties “to formulate remedial strategies that are beyond this Arbitrator’s jurisdiction and authority.” The parties are free, of course, to consider matters disparate from this controversy to reach a resolution on the remedy. The Arbitrator’s encouragement constituted notice to the parties that, within the context of this case, the Arbitrator’s jurisdiction over potential remedies was narrow. The Opinion also predicted that any remedy may be “conditional” which anticipated the possible cessation of Letter Three/Supplement W. The *Bloch* decision, while not ruling on all aspects of the termination of Letter Three/Supplement W, dispensed with the need for any conditional

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remedy on identifying which pilots fall within the ambit of the May 11, 2007 Award since the *Bloch* decision permitted the parties to concur on the number (154) of TWA new hire pilots.

The question becomes whether any appropriate remedy can include a readjustment of the AA seniority roster and/or an order placing AE flow-through pilots, with AA seniority numbers, into AA training classes ahead of or instead of any former TWA pilot.

At the start of the June 28, 2006 hearing on the liability phase, the parties stipulated to this issue. "...whether former TWA pilots placed on the AA Seniority List filled or may fill 'new hire positions' in 'new hire classes' within the meaning of Letter 3, Roman numeral III.A. If so, what is the appropriate AA seniority number remedy for AE CJ Captains covered by Letter 3, Roman III." [TR 9] The issue tracked the grievance wherein ALPA sought, on behalf of CJ Captains, "... wrongfully denied positions" on the AA seniority list. Nothing in the stipulated issue or the grievance even remotely suggests that the remedy encompasses reordering the AA seniority list or moving the CJ Captain to immediate AA employment. One of the primary purposes of stipulating to the issue is to establish the boundary lines of the Arbitrator's authority. The agreed-upon question at issue submitted by the parties limits the Arbitrator's authority. *See, 187 Concourse Associates v. Fishman, Id.*

In addition, in the Award and Order, the second stipulated issue was expressly remanded to the parties. Item 2 of the Award and Order states: "...what is the appropriate seniority number remedy for AE CJ (Commuter Jet) Captains covered by Letter 3/Supplement W, Section III? The Arbitrator remands this case to ALPA, AE,

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APA and AA to formulate an appropriate remedy in accord with the second issue herein.”

This remand unequivocally restricted the remedy to “the appropriate seniority number.”

To now consider remedies beyond the generation of seniority numbers would upset stable labor management relations at AA and AE. The evidence and arguments raised during the contract liability phase were all submitted on the understanding that the remedy was solely relegated to seniority number generation. It would set a dangerous precedent for this Arbitrator to now disregard the stipulated issue. The parties could never be sure, when they stipulated to the issue in future cases, whether the Arbitrator would obey the parties limitations on his authority.

In addition, going beyond the stipulated parameters of a remedy undermines due process. The parties presented evidence and argument knowing the issues under consideration. This Arbitrator made evidentiary rulings and issued a judgment predicated solely on the stipulated issues. The parties have hardly had any meaningful opportunity to present evidence on seniority list readjustment or the proper application of Section III.D with respect to placing AE pilots in new hire classes. Due Process dictates that the remedy herein be restricted to the generation of seniority numbers.

The Arbitrator is mindful that leaving issues such as whether any flow-through pilots are entitled to seats in AA training classes, either prior to May 1, 2008 or subsequent to May 1, 2008, undecided could allow a dispute to fester, causing harm to airline operations and pilots. Nevertheless, the Arbitrator is bound to comply with the limitations on his authority.

The Arbitrator’s remarks herein should not be construed to express any opinion on whether ALPA and/or AE waived any right to seek the additional relief it requested

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herein in any subsequent case. More specifically, the issue of whether ALPA and/or AE waived any additional remedy is not before this Arbitrator. Therefore, the Arbitrator cannot decide if the contents of ALPA's and AE's opening statements and briefs constitute waivers.

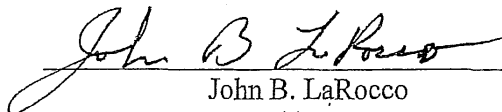
In sum, the Arbitrator lacks jurisdiction to decide Issue Nos. 6, 7, 8, and 9.

AWARD AND ORDER

The Arbitrator renders the following Findings and Orders.

1. The 154 TWA new hire pilots generate 154 AA seniority numbers for 154 AE flow-through pilots.
2. AA and APA shall grant the 154 AA seniority numbers to 154 AE flow-through pilots, in seniority order.
3. The 154 AA seniority numbers generated herein shall be at the bottom of the AA seniority list.
4. The 154 AA seniority numbers granted to the 154 AE flow-through pilots shall be effective April 30, 2008.
5. For the reasons explained herein, the Arbitrator lacks jurisdiction to decide Issue Nos. (6), (7), (8), and (9) which are set forth at the beginning of the Discussion section herein.
6. APA and AA shall comply with Items (2), (3), and (4) of this Award and Order within thirty (30) days of the date stated below.
7. The Arbitrator retains jurisdiction over this case to resolve any dispute concerning the application of the specified remedy; provided however, this retention of jurisdiction shall expire in one (1) year unless the four parties agree to extend the retention of jurisdiction.

Dated: October 20, 2008


John B. LaRocco
Arbitrator