A QUARTER CENTURY OF NEW DIRECTIONS IN LEADERSHIP AND MISSION

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Chapter 6

THE NAA'S ROLE IN AIRLINE LABOR-MANAGEMENT RELATIONS

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Introduction

NAA: Fifty Years in the World of Work, the 1997 history of the first half-century of the National Academy of Arbitrators, touched on the airline industry only briefly and noted the impact of federal deregulation in the late 1970s. [1] Today the U.S. airline industry warrants a prominent position in the NAA's historical record in light of the volume, variety, and importance of cases that NAA members handle.[2] In addition, this heavily unionized industry has grown enormously and has a significant impact on the economy, with airlines carrying 2.5 million passengers per day and aviation accounting for more than 5 percent of gross domestic product. [3]

The NAA, as an institution and through its members, has played an essential role in the cyclical and unpredictable world of airline labor- management relations during the last 25 years. [4] NAA members have been instrumental in helping the parties through the major challenges in this tumultuous industry. Moreover, they have been the nearly exclusive source for neutrals in resolving day-to-day grievance arbitration disputes. NAA members also have played a major role in facilitating discussions and needed changes in collective bargaining throughout the period.

[1] Gladys W. Gruenberg, Joyce M. Najita & Dennis R. Nolan, *The National Academy of Arbitrators: Fifty Years in the World of Work* 171-72, 249 (1997). *See* Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705, codified as amended in different sections of 49 U.S.C. (2018).

[2] The NAA has paid special attention to the airline industry at its annual meetings in recent years. Moreover, the industry has been the subject of panels and of papers in the organization's proceedings. Airline industry panels comprised of advocates and neutrals have given well- attended presentations at nearly every NAA annual meeting during the last 25 years. Several sessions have dealt with issues stemming from airline

mergers, including the negotiation of joint collective bargaining agreements and the arbitration of seniority list integration. Topics have also included system boards of adjustment, just cause, mediation, med-arb interest arbitration, employee ownership interests in the 1990s, and the impact of 9/11. In addition, National Mediation Board (NMB) chairs and members have presented on the agency's operations and the Railway Labor Act's legal structure.

[3] Airlines for America, *Economic Impact of Commercial Aviation by State*, https://www.airlines.org/data/; Federal Aviation Administration, *The Economic Impact of Civil Aviation on the U.S. Economy*, www.faa.gov.2016-economic-impact-report_FINAL. The lessening of union penetration in the rest of the private sector also has heightened the industry's impact on U.S. labor relations.
[4] Joshua Javits, Robert Harris, and Helen Witt were both NAA and NMB members. Other NAA members affiliated with the NMB were Steven Crable (chief of staff), Dana Eischen (special assistant to the chairman), Richard Kasher (general counsel), and Joyce Klein (legal counsel). Former airline labor relations officials Mark Burdette, Paul Chapdelaine, Elizabeth Neumeier, and Elliott Shaller became NAA members.

President Clinton established the Dunlop Commission on the Future of Worker-Management Relations in 1993—so-named for NAA charter member John Dunlop who chaired the Commission—to look into worker- management relations and U.S. labor law and make recommendations for reform. The Dunlop Commission found that railroad labor and management jointly drafted the Railway Labor Act (RLA), [5] and these parties desired no changes in the law.[6] This was in strong contrast to the many changes the relevant parties sought in the National Labor Relations Act (NLRA). [7]

The Dunlop Commission recommended that an Airline Industry Labor-Management Committee be created—as well as a committee for the railroad industry—to work with the parties to "make specific recommendations for change which would improve the processes and performance of collective bargaining in the resolution of 'major' and 'minor' disputes." [8] The Airline Committee, co-chaired by NAA member and former chairman of the National Mediation Board (NMB) Robert Harris, consulted with the parties and submitted a report to the Departments of Labor and Commerce in 1997. The NMB subsequently implemented the recommendations.

In 2009 the NMB established a group comprised of representatives of airline and railroad carriers and unions, called Dunlop 2,[9] which meets several times a year with the agency to discuss issues of mutual concern. The group reflects the ongoing history of the unions, carriers, and the NMB working together on statutory and administrative issues.

Railway Labor Act

The Railway Labor Act is the legal framework that governs labor relations in the airline industry. The law was enacted in 1926 as a result of negotiations between labor leaders and railroad companies following the failure of prior labor relations statutes to address the often violent disputes between rail labor and management. The RLA's primary objective was to avoid interruptions in interstate commerce, including the transport of crucial commodities such as coal and food. In 1936, as a result of lobbying efforts by the Air Line Pilots Association (ALPA), amendments to the RLA extended its coverage to the airline industry. [10]

The RLA provides for comprehensive bargaining obligations designed to ensure agreements are reached and transportation is maintained.

[5] 45 U.S.C. § 151 *et seq.* (2018).
[6] *The Dunlop Commission on the Future of Worker-Management Relations: Final Report* 92-93 (Dec. 1, 1994) [hereinafter Dunlop Commission]. The Commission noted: "Unlike the National Labor Relations Act, which was enacted through substantial labor-management and political conflict, the 1926 Railway Labor Act was made law with the full agreement of railroad labor and management.... These parties regard the Railway Labor Act as their creation, achieved through a bi-partite process, and they are justly proud of their role in the enactment of the statute." *Id.* The RLA was later amended to include the airline industry after discussion with the parties.
[7] 29 U.S.C. §§ 151–169 (2018).
[8] Dunlop Commission, *supra* note 6, at 93.
[9] Seth Rosen (airline unions), Robert DeLucia (airline management),Kenneth P. Gradia (rail management), Joel Parker (rail unions), and Joshua Javits (facilitator) were the initial members of Dunlop 2.
[10] 45 U.S.C. § 181 (2018).

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These include direct negotiations between the parties, [11] followed by a period of mediation by the NMB[12]; the proffer of interest arbitration, which is engaged if both parties agree [13]; and the potential creation of a Presidential Emergency Board (PEB).[14] The parties are required to maintain the status quo throughout the multifaceted bargaining process.[15] Congressional intervention in settling disputes is always possible, but such action is not part of the RLA statutory process.

In addition, the RLA contains a representation election process[16] and a requirement for all carriers to create system boards of adjustment (SBAs) to resolve grievances. [17] It provides for only narrow judicial review of arbitration decisions and awards. [18]

National Mediation Board Role and Roster

The National Mediation Board was created under the RLA to administer the essential RLA provisions. [19] The NMB mediates the parties' "major" disputes—defined as disputes about the modification of existing agreements or the creation of new ones.[20] It has nearly unreviewable authority to hold the parties in mediation until it deems mediation to be unsuccessful.[21] Unlike the NLRA, unfair labor practice claims are under court, not NMB, jurisdiction.

The NMB maintains a roster of neutral arbitrators. The neutral arbitrators are used, for example, when airline parties request a strike panel or request a single arbitrator to hear a dispute. Of course, the parties may select an arbitrator who is not on the NMB roster.

All NAA members are automatically qualified to be on the NMB roster under the agency's rules. [22] If the arbitrator is not an NAA member, he or she must have issued decisions in five cases, or have 10 years of experience, in airline or railroad industry labor relations. Most airline collective bargaining agreements require that arbitrators serving on permanent panels, or those being chosen on an ad hoc basis, be NAA members.

[11] *Id.* § 152, Sixth. [12] *Id.* § 156.
[13] *Id.* § 155 (b).
[14] *Id.* § 160.

[15] *Id.* § 156.
[16] *Id.* § 152, Ninth. Interestingly, subordinate officials are first-level supervisors who would be excluded from coverage under the NLRA but are covered under the RLA.
[17] *Id.* § 184. Railroad arbitration is administered and paid for by the Federal Government through the NMB. In contrast, the airlines' arbitration scheme is a matter of negotiation so long as a system board of adjustment is established.
[18] *Id.* § 153(q). Grounds for review are failure to comply with the RLA, acts in excess of jurisdiction, and fraud or corruption.
[19] *Id.* § 154.
[20] *See* Elgin, J. & E. Ry. v. Burley, 325 U.S. 711, 723-24 (1945).
[21] IAM v. NMB, 425 F. 2d 527, 537 (D.C. Cir. 1970), confirmed in IAM v. NMB, 930 F.2d 45 (D.C. Cir.), *cert. denied*, 502 U.S. 858 (1991).
[22] NMB, *Uniform Procedures for Placement and Retention on the National Mediation Board's Roster of Arbitrators* (Mar. 11, 2009).

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"Major" and "Minor" Disputes

In interpreting and applying the RLA, the courts have traditionally categorized labor disputes involving collective bargaining as "major" disputes or "minor disputes." "Major" disputes concern the making or changing of the collective bargaining agreement. "Minor" disputes involve interpreting or applying the collective bargaining agreement. [23]

In contrast to the detailed procedural requirements for arbitration between the railroads and their unions, [24] or the legal requirements under the National Labor Relations Act, the RLA as applied to arbitration in the airline industry only dictates that the parties establish a system board of adjustment to resolve grievances. The RLA does not dictate any other requirements, such as the duty to provide information or engage in discovery as part of system board procedures.[25] However, the parties may voluntarily agree to such provisions in their collective bargaining agreements.

System Boards of Adjustment

System board rules and procedures are solely a creature of the collective bargaining agreement. Courts have held that no duty exists to create a system board of adjustment until the parties have a first binding collective bargaining agreement. [26]

System boards of adjustment are comprised of an equal number of labor and management representatives, usually two or four partisans."[27] These partisans sit with a neutral arbitrator if they cannot resolve the dispute themselves at an earlier grievance step. Each SBA member has a single vote, including the neutral.

The party members are helpful in three ways. First, they provide the neutral with technical understanding of the issues (e.g., complex pilot performance, qualification and scheduling issues). Second, they can, where appropriate, act as conduits to the parties to facilitate settlement. Third, they can help the neutral identify and weigh key evidence in light of their knowledge of unique workplace realities.

[23] *See Elgin*, *supra* note 20; Conrail v. RLEA, 491 U.S. 299 (1989).
[24] Unlike railroad arbitration, for which the Federal Government compensates arbitrators, the parties pay airline arbitrators. In addition, airline arbitration is a de novo procedure, not an appellate one as with railroads. *See supra* ch. 5, M. David Vaughn, "The Academy and the Railroad Industry."
[25] 45 U.S.C. § 184 (2018) states: "It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this [Title], to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of Section 153 of this Act." *See* IAM v. Central Airlines, 372 U.S. 682 (1963).
[26] ALPA v. Jetstream Int'l Airlines, 716 F. Supp. 203, 204 (D. Md. 1989).
[27] System board members assigned by each party are sometimes referred to as "partisan neutrals," having some indicia of partisanship because they are chosen by one side only. Yet, they are also able, if not necessarily expected, to use their independent judgment. To ensure their independence, many collective bargaining agreements protect party SBA members from retaliation based on their board activities.

Interest Arbitration and Release by the NMB

Although most bargaining disputes are resolved in direct or mediated negotiations, the parties have sometimes availed themselves of interest arbitration. The RLA provides that after the NMB determines mediation has been unsuccessful, the NMB will proffer arbitration to the parties. [28] If both sides agree, the dispute is submitted to interest arbitration. If not, the parties are released to use self-help. Although this dispute resolution approach is relatively rare, when it is agreed to, NAA arbitrators have been called on to conduct the interest arbitration. The RLA lays out specific procedures for interest arbitration, but the parties may agree to their own process.

If one of the parties rejects the proffer of arbitration, it is precluded, and the parties are released to use self-help following a 30-day cooling-off period. Self-help allows unions to strike. Management can then permanently replace striking employees, lock out the particular work group, or unilaterally impose contract terms so long as the subject matter has been negotiated.

Presidential Emergency Boards

At any time after release, the National Mediation Board can trigger a Presidential Emergency Board by notifying the president of its finding that a shutdown would have a substantial impact on the national or regional economy.[29] Once notified, the president then has the discretion to create a PEB. If created, the status quo must be maintained during which self-help is prohibited for a 60-day period—30 days for the PEB to hold hearings and issue a report to the president and another 30-day cooling-off period thereafter.[30] Nearly all PEBs have three or five neutrals who are almost always NAA members and are listed on the NMB roster.

Three PEBs were created in the airline industry from 1997 to 2001, after a lapse of 31 years since the last prior airline PEB was established in 1966 [31]:

• President Clinton created PEB 233 in 1997—with Robert Harris, Anthony Sinicropi, and Helen Witt—after pilots represented by the Air Line Pilots Association struck American Airlines. The PEB did not issue a recommendation because the parties reached an agreement during its existence.

[28] 45 U.S.C. § 155 (b). Although the RLA lays out detailed procedures for interest arbitration, the parties are free to establish their own process. In addition, the parties may mutually agree to interest arbitration even before an NMB proffer.
[29] *Id.* § 160. *See* https://joshuajavits.com/sites/default/files/uploads/images/stories/SettlingAirlineDisputes.pdf. [30] A provision of the RLA applicable to commuter railroads calls for two PEBs on initiation of a single party or the governor of an affected state. *See supra* ch. 5, M. David Vaughn, "The Academy and the Railroad Industry."

[31] Increasing consolidation in the airline industry and rising passenger loads—prior to the COVID-19 pandemic—are changing the dynamics for triggering a PEB. These developments make PEBs more likely to avoid self-help, given the tremendous economic consequences of a shutdown or even a threatened shutdown.

- In 2001 President Bush established PEB 235—with Helen Witt, Robert Harris, and Richard Kasher—for a Northwest Airlines (NWA)/Aircraft Mechanics Fraternal Association (AMFA) dispute; the dispute was settled just before the PEB issued its report.
- PEB 236—with Helen Witt, Ira Jaffe, and David Twomey—was established in a United Airlines/International Association of Machinists (IAM) dispute in 2001; an agreement was reached after the PEB report was issued.

Where the parties have still not reached agreement after a PEB, they again have the right to use self-help. Congress has sometimes stepped in to legislate an end to the dispute in the public interest.[32] Not since prior to deregulation in 1978 has Congress intervened in an airline dispute.

Strikes

The airlines are an essential industry, part of the vital infrastructure undergirding the rest of the U.S. economy. The RLA contains built-in processes that control the timing, frequency, and impact of shutdowns in the public interest. The law's mechanisms and purposes encourage settlements, which provide stability and consistency to the industry. As a result, only four strikes have occurred during the last 25 years:

- An NWA/ALPA strike over Labor Day weekend in 1998 was settled after a 13-day walkout.
- Pilots represented by ALPA struck Comair, a wholly owned regional subsidiary of Delta, for 13 weeks in spring 2001 until finally reaching an agreement.
- An NWA/AMFA strike in 2005 began a month before NWA went into bankruptcy; the parties never reached a settlement.
- A four-day strike in 2010 ended when Spirit and ALPA came to terms on a collective bargaining agreement.

Airline Industry Trends

The airline industry is heavily unionized; in 2019 unions represented about 55 percent of the 740,000 employees. Three of the Big 4 airlines— United Airlines, American Airlines, and Southwest Airlines, along with Alaska Airlines—are between 80 and 85 percent organized. The rate of unionization in the airline industry is still about eight times higher than the average of 7 percent of private-sector U.S. workers.

The industry moves more than 2.5 million passengers per day in the United States. It is extraordinarily affected by changing fuel prices,

[32] It has done so by imposing the PEB report as the parties' new collective bargaining agreement, by ordering interest arbitrations, or by extending the status quo period. Congressional action is not part of the RLA process. Congress had intervened in the past to end self-help, though almost exclusively to end railroad strikes. The parties perceived congressional intervention as a real possibility, so they felt pressured to reach agreement after a PEB—often on the basis of the PEB report.

competition from low-cost carriers, and declines in air travel due to recession, epidemics, and terrorism.

The cyclical economic sensitivity of the business, as well as the impact of powerful nonrelated factors, lead to both serious clashes and cooperative efforts between the carriers and their unions. NAA arbitrators are regularly called on to help the parties deal with these externally and internally generated challenges and contribute toward a more stable and predictable environment.

Several developments and scenarios have been defining ones for the airline industry:

1995-2000. The airline industry was consistently profitable for the first time since full implementation of deregulation in 1981; restrictions on market entry and fare regulation were lifted in 1981.

2001. The U.S. economic downturn prior to 9/11 severely affected the industry, which was already projected to lose $2 billion. The terrorist attack on September 11, 2001, caused the closure of U.S. airspace and the grounding of aircraft for five days. Airlines attempted to shrink to profitability, but the viability of existing airlines was seriously questioned. The Federal Government made loans to the industry to help it survive.

2001-2005. The industry sustained $35 billion in losses because of reduced travel demand, intense competition, high fuel prices, Middle East conflicts, and security concerns that led to the creation of the Transportation Security Administration. Major job losses resulted, and voluntary concessions were sought through restructuring agreements. NAA members were very involved in helping the parties work through the issues that arose. The carriers used force majeure clauses to escape from contract restrictions on reductions in force. Despite the parties' efforts to negotiate concessions, many airlines went into bankruptcy and used the bankruptcy law's contract rejection process to extract employee concessions. Some employee pensions were terminated, with the Pension Benefit Guaranty Corporation assuming control and establishing sometimes lower ceilings on benefits.

2005-2011. Significant consolidations marked the period 2005 to 2011. Nine major airlines in late 1990s consolidated down to four mega carriers: Delta Air Lines, United Airlines, American Airlines and Southwest Airlines.[33] NAA arbitrators were deeply involved in the parties reaching joint collective bargaining agreements through interest arbitrations and through arbitrations to determine how seniority lists would be integrated.

[33] The Big Four resulted from these consolidations: US Airways/America West (2005); Delta Air Lines/Northwest Airlines (2008); United Airlines/Continental Airlines (2010); Southwest Airlines/AirTran Airways (2011); and American Airlines/US Airways (2013).

2011-2020. The industry was consistently profitable despite the impact of the Great Recession (2008- 2010). Unions were able to recoup many of the concessions from the 2001–2010 period. Pattern bargaining, which historically was practiced in the industry, intensified, especially for pilots at the Big 4.

2020. The COVID-19 pandemic has reduced passenger travel substantially. In addition, revenue has been suddenly and vastly reduced. The long-term implications of these reductions are not yet known. [34]

Airline Industry Carriers

The airline industry is composed of several distinct business groupings: major airlines, low-cost carriers, regional airlines, and air cargo carriers.

Major Airlines

The Federal Aviation Administration defines a "major" carrier as having more than $1 billion in revenue annually, and approximately 10 passenger airlines and two cargo carriers meet this definition. As a result of industry consolidation between 2008 and 2013, four mega carriers emerged. Delta Air Lines, United Airlines, American Airlines, and Southwest Airlines now control more than 80 percent of airline passenger revenue and dominate origin and destination flying. The six smaller major carriers—JetBlue, Alaska, Hawaiian, Frontier, Allegiant and Spirit—each control less than 5 percent of the market. Just prior to the COVID-19 pandemic, approximately 2.5 million passengers per day flew in the United States. The concentration of the industry brought a degree of stability in labor relations. In addition, international flying has also become more coordinated with the development of international airline alliances in the 1990s.

Low-Cost Carriers

Low-cost carriers (LCCs) tend to keep the ticket prices of the major airlines lower than they would otherwise be. However, they do not have the size of the Big 4 and, therefore, cannot provide the route coverage, trip frequency, frequent flyer, and other perks that business travelers appreciate. This is especially true of LCCs such as Allegiant, Frontier, Spirit, and Sun Country that use low prices alone to attract price-sensitive leisure travelers rather than business travelers, the source of profitability for the larger majors.

[34] Ironically, the two most profitable and stable periods for the airlines, 1995 to 2000 and 2009 to 2019, were each brought to an abrupt and disastrous halt by unforeseen external events—9/11 and the COVID-19 pandemic, respectively. Just when the airlines begin to think they are invulnerable, they have been rudely awakened by calamities not of their making. Other shocks, if of less historic proportions, have always played a role in the industry and management's relations with its unions and employees.

Regional Airlines

The major airlines operate narrow and wide-body aircraft from their large hubs and other big cities as well as to and from international destinations. However, they are fed passengers from small and midsized markets serviced by regional airlines, which fly aircraft with 50 to 76 seats. [35]

The regional airlines are either independently owned or wholly owned by major airlines and code share with them. The major airlines handle all the bookings using their own reservation system for the regional flights. The flights appear to passengers as part of the major airline by virtue of the use of the major's reservations code as part of the flight numbers and their nearly identical livery (paint job) and flight crew uniforms.

The regional carriers enter into capacity purchase agreements with the majors, and this restricts their operations. They pay their employees far less than the majors, but initial jobs are easier to come by with a regional carrier than with a major carrier. Pilots, in particular, will build up their flying hours with a regional so they are eligible for hire by a major airline. [36]

The regional airline industry is not immune to consolidation. Consolidation has occurred among regional airlines but is still less common than among the major airlines.

Air Cargo Carriers

The air freight industry includes carriers such as FedEx, UPS, Atlas Air, the growing Amazon Air and others that provide a critical service of carrying freight nationally and internationally. [37] They are a vital link in the global supply chain. The International Brotherhood of Teamsters (IBT) represents many of the pilots at these freight carriers. Passenger airlines also carry a great deal of freight in their cargo holds, which is a profitable aspect of their business.

Airline Industry Labor Organizations

Labor organizations represent about 55 percent of industry workers, including pilots, flight attendants, and ground employees (e.g., mechanics, fleet service employees, and customer service agents).

Pilot Unions

The Air Line Pilots Association is the largest union representing over 63,000 pilots at 34 carriers in Canada and the United States, including Delta Air Lines, FedEx, and United Airlines. ALPA also represents many of the regional airline pilots. The Allied Pilots Association (APA) represents

[35] The 76-seat limit is dictated by scope clauses in the major airlines' pilot contracts. These clauses are collective bargaining agreement provisions that aim to protect the work of the pilots at a major carrier by attempting to restrict the carrier's ability to divert flying to lower-cost airlines.

[36] As a result of a pilot shortage, many regionals made agreements with their unions to pay bonuses of $20,000 or more as well as pay for the extensive training required to be an airline pilot. Captains are in especially short supply, and the majors are eager to poach these more experienced pilots from the regionals. At least such was the case prior to the advent of the COVID-19 pandemic.

[37] Emery Air and DHL Aviation went out of business during this period.

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pilots at American Airlines, and the Southwest Airlines Pilots Association (SWAPA) represents pilots at Southwest Airlines. The Independent Pilots Association (IPA) represents UPS pilots. APA, SWAPA, and IPA are independent unions. The Teamsters Union (IBT) represents the pilots at several smaller cargo carriers and those of Allegiant, FlexJet, and other carriers.

Flight Attendant Unions

The largest flight attendants union is the Association of Flight Attendants (AFA), which represents flight attendants at Alaska Airlines, United Airlines, and many regional airlines. The Transport Workers Union (TWU) represents Southwest Airlines and JetBlue flight attendants, and the Association of Professional Flight Attendants (APFA) represents American Airlines (AA) flight attendants. IBT represents flight attendants at several regional carriers.

Ground Employee Unions

The Machinists Union (IAM) represents mechanics and related employees and fleet employees (baggage handlers, cleaners, etc.) at United Airlines and other airlines. A TWU/IAM joint council represents American Airlines mechanics and fleet workers. AMFA represents Southwest and Alaska mechanics, and the IAM represents Southwest's fleet employees.

NAA Member Roles in the Airline Industry

Airline arbitrators perform critical neutral activities in different ways: traditional grievance arbitration, grievance mediation, interest arbitration, med-arb, and service on Presidential Emergency Boards. They have played an especially important role in the post 9/11 period—one marked by bankruptcies and industry consolidation that resulted from multiple enormous mergers and acquisitions. Arbitrations involving seniority list integration, also a result of this industry consolidation, have been particularly complex and contentious.

Nearly all airline collective bargaining agreements require arbitrators to be members of the National Academy of Arbitrators; this requirement reflects the industry's recognition of the high standards tied to NAA membership. The complexity and uniqueness of airline disputes place special demands on neutrals, and the parties seek not only sophisticated arbitrators but also those with experience in the industry.

When negotiating a "major" dispute relating to contract creation and amendment, NMB mediators and members are normally directly involved. However, on many occasions the parties agree to a med-arb or pure interest arbitration process in which independent neutrals guide the process toward reaching a collective bargaining agreement.

Several important cases arose from the many and various headwinds facing the industry. Several resulted from the transformative emergence of regional jets in the 1990s and the dire economic consequences of 9/11, numerous bankruptcies and subsequent mergers and acquisitions. These disruptions led to serious labor-management conflicts, which then brought forth creative resolution processes handled by neutrals with expertise and

sensitivity. The repeat use of a select group of NAA arbitrators is the surest affirmation of their rising to the occasion. The COVID-19 pandemic may similarly test the system and require use of NAA resources.

Interest Arbitration, PEBs, and Other Significant Cases

The period 1995 to 2020 has seen several major interest arbitrations. These and other cases have tested the capabilities of airline arbitrators and highlight NAA member roles in the airline industry.

American Airlines/Association of Professional Flight Attendants Interest Arbitration (1993–1995). In late 1993, the NMB released AA flight attendants, who then struck for five days just before the busy Thanksgiving holiday. The carrier could not operate because it could not qualify new replacement flight attendants until they had undergone federal aviation regulation-mandated training. AA planes flew empty, resulting in enormous losses. The impact of flight attendant training regulations, and their use by APFA, thus greatly influenced the course of the strike and its subsequent resolution.

The Clinton administration became involved, and AA agreed to accept interest arbitration. Interest arbitration resulted in a binding agreement; this solution was preferred over a PEB, which would have allowed a second opportunity for self-help if both parties did not accept its recommendations. The hearings continued for nine months before a panel of seven arbitrators—four party representatives, NAA members Richard Kasher and Geraldine Randall, and Chair Charles Resnick, a commercial arbitrator who was not an NAA member. The panel's decision was issued October 11, 1995, and the parties settled the dispute on the basis of the arbitration report.

American Eagle/Air Line Pilots Association Collective Bargaining Agreement (1997–2013). In 1995 four regional air carriers wholly owned by AMR Corporation, also the parent of AA, consolidated into a single carrier, American

Eagle. Two years later, labor and management agreed to a 16-year framework agreement with a 2013 amendable date that allowed for several expedited amendment rounds. The deal provided for an industry index that was used to periodically adjust pilots' pay rates. The parties used a formula to calculate the average change in pay rates across the regional industry at carriers not in bankruptcy, with a minimum increase guaranteed at 1.5%. That minimum increase became important after 9/11, because all the comparator carriers were dialing rates back while American Eagle was locked into increases. The parties could also each bring five issues to the interim interest arbitrations.

One such interest arbitration, which followed the defeat of the 2000 tentative agreement, used a panel of three arbitrators (Richard Bloch, Richard Kasher, and George Nicolau). Of particular concern was the definition of an "issue." The carrier argued that the union was bundling multiple issues in some of the five issues it raised in arbitration. The arbitration panel refrained from awarding items that did not reflect patterns in the regional industry. The future amendment rounds were successfully negotiated without resorting to interest arbitration.

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American Airlines/Allied Pilots Association Presidential Emergency Board and Flow-Through Agreement (1997). In 1997 APA struck AA, and President Clinton created PEB 233 with Robert Harris, Anthony Sinicropi, NAA former president, and Helen Witt. The PEB did not issue a recommendation because the parties reached an agreement during its existence. Harris was instrumental in mediating an agreement during meetings on Orcas Island, Washington, in which Don Carty, chairman and CEO of AMR Corp (the parent company of AA) participated.

After the PEB decision was prepared but not yet issued, Harris moved the parties to agreement partly by expanding on a scope issue APA initially raised in its proposal to perform *all* flying for the carrier. This would include flying done by American Eagle, AMR Corp's wholly owned regional carrier.

The negotiation of a flow-through agreement[38] became a key element in resolving matters before the PEB. The four parties to the flow- through agreement were APA, AA, ALPA, and American Eagle. The Air Line Pilots Association was also in negotiations with American Eagle at about the same time.

Approximately 15 four-party flow-through arbitrations occurred, some of which involved the rights of the furloughed AA pilots. Richard Bloch made an important decision on the impact of the expiration date of the flow-through agreement; the agreement had a 10-year duration, which ended in 2008.

Bloch ruled that the American Eagle pilots holding AA pilot seniority numbers—though they did not fly AA aircraft—could keep them, as a vested right, even after the expiration of the flow-through agreement. These pilots would also have a future right to flow to AA when AA resumed hiring. Bloch did not rule on precisely how their seniority would be used. [39]

George Nicolau subsequently ruled on a grievance brought by ALPA, holding that Eagle pilots who held AA seniority numbers, but continued to fly at Eagle, had the right to occupy 50 percent of the class slots at AA under the flow-through agreement. In his remedy award, Nicolau specified the exact process by which Eagle pilots would flow to AA.[40] ALPA, APA, AA, and American Eagle abided by the Nicolau award and the

[38] The flow-through agreement allowed Eagle pilots to obtain AA pilot seniority numbers and flow up to American when AA was hiring new pilots. Before flowing up to AA, Eagle jet captains had to serve training blocks of 18 or 24 months at Eagle. The agreement also allowed AA pilots to flow down to Eagle during pilot furloughs at American. It provided that at least one of every two new-hire positions per new-hire class at American would be offered to Eagle captains in order of seniority. The agreement became part of both the AA/APA and the American Eagle/ALPA contracts. As a result, pilots flowed up from Eagle to AA, until 9/11 caused layoffs at AA and AA pilots flowed down to Eagle.

[39] Approximately 125 Eagle pilots could take advantage of the flow-up opportunities to AA, while more than 300 AA pilots could bump into Eagle positions. Eagle pilots received AA seniority numbers upon successfully completing training as a regional jet captain at Eagle when AA was hiring. Because of the rapid growth of Eagle's regional jet fleet, AA pilot hiring, and the 18- and 24-month training locks, about 800 Eagle pilots held AA seniority numbers they had received prior to 9/11. These pilots were still flying at Eagle between 1999 and 2001, because a backlog of pilots in training freezes developed.

[40] Several pilots challenged Nicolau's decision and subsequent remedy award in the courts, but the Fifth Circuit upheld his award and the Supreme Court denied certiorari. Mackenzie v. ALPA, 598 F. App. 223 (5th Cir. 2014), *cert denied*, 135 S. Ct. 2896 (U.S. 2015).

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original four-party agreement reached in 1997, despite the complexities caused by 9/11.

The concept of seniority-based pilot flow-through to AA has been embodied in several subsequent agreements in the airline industry. It continues at American Eagle's successor, Envoy Air, where both management and labor accept the strategy as a tangible means of career progression.

Delta/ALPA Force Majeure (2001), Bankruptcy (2005), and Interest Arbitration (2007). Although the airlines had been very profitable in the 1995 to 2000 period, after 9/11 and the closure of U.S. airspace for five days, Delta, along with most airlines, invoked the force majeure provisions of its collective bargaining agreement. The carrier claimed the right to reduce staffing as an exception to the agreement's no-furlough clauses. The pilots challenged the carrier's invocation of force majeure in certain instances in a series of cases in the years following 9/11. Richard Bloch, former NAA president, arbitrated the disputes. He found that 9/11 was a force majeure event. However, he set parameters on how long and to what extent the continuing effects of 9/11 should be viewed as excusing compliance with certain contractual provisions.

In September 2005 Delta filed for bankruptcy, along with 22 other airlines during the period 2001 to 2005.[41] Section 1113 of the Bankruptcy Code provides that the debtor in bankruptcy court can seek to reject or modify contractual terms if it can establish that the changes are necessary for the reorganization of the company and if it treats all parties fairly and equitably. A conflict of law issue arose because of the dramatic legal differences between the bargaining process under the RLA and the bankruptcy law process under section 1113. Under the RLA, the NMB controls the mediation process and agreements must be mutually agreed to. Importantly, when the bargaining process is fully exhausted, the parties are eventually released into self-help. By contrast, under bankruptcy law, the judge controls the timing of the process, usually subject to severe time constraints, and allows for unilateral changes approved by the court. However, initially no definitive circuit court decision was rendered on whether a contract rejection by a bankruptcy judge under section 1113 would permit self-help under the RLA. The bankruptcy court held that the status quo provisions of the RLA barred post-rejection strikes until the parties bargained under the RLA and were released. [42]

In a special case, ALPA and Delta Air Lines mutually agreed to remove their section 1113 process from the court's jurisdiction and substitute a panel of three arbitrators to decide whether the section 1113 standards had been met by Delta's last proposal. The panel would either select the company's proposal and reject the contract or side with ALPA and not reject the contract. The parties chose to use three NAA arbitrators—Robert Harris,

[41] The bankruptcies were the result of the lasting impact of 9/11; large cost differentials between the legacy network carriers and the emerging low-cost carriers in the early 2000s; and the spike in oil prices after Hurricane Katrina in late August 2005. AA filed much later, in November 2011, though it obtained union concessions beginning in 2001 in an effort to avoid bankruptcy. [42] Delta Air Lines, 359 B.R. 491 (Bankr. S.D.N.Y. 2007); *see also* Northwest Airlines v. AFA, 483 F.3d 160 (2d Cir. 2007).

Richard Bloch, and Fredric Horowitz. The panel skillfully engaged in active mediation and adjudication of the issues and succeeded in bringing the parties to a voluntary agreement. As Bloch eloquently stated to the parties at the close of the arbitration hearing: "[T]he obligation to continue the bargaining relationship, to respond meaningfully and responsibly to the needs of the other party, [had] never been more essential and . . . [c]ollective bargaining, it is true, is premised on an adversary relationship, but there's far more to it than that. The parties are in

every sense of the word trustees of this relationship." The panel implored the parties to seek a consensual resolution and stressed it would be available to assist in every way possible. Importantly, both the court and creditors accepted the eventual agreement and the Delta pilots ratified it. The Delta/ALPA arbitration process established a pattern that led other pilot groups and carriers forward through the restructuring era in the mid-2000s.

Alaska/ALPA Interest Arbitrations (2001, 2005, and 2012-2013).

Beginning in 1974, Alaska Airlines and ALPA agreed to interest arbitration as a backstop for their negotiations, and they have maintained the process ever since. The decision to use interest arbitration was initially part of a back- to-work agreement following a flight attendant strike during which the pilots supported the flight attendants.

Several voluntary agreements were reached subsequent to that agreement, but some also ended up being arbitrated. During each round of negotiations, the parties agreed to a formula for calculating pay rates, generally taking the average pay rates of employees at the other major airlines and applying them to Alaska employees.

In May 2001 George Nicolau issued an interest arbitration award regarding pay for Alaska pilots on the 737-900 aircraft. In 2005, at the height of the post-9/11 bankruptcies that Alaska and Southwest alone among the major airlines avoided, the parties again submitted their dispute to interest arbitration; Richard Kasher served as the arbitrator.

In 2012-2013 Alaska and ALPA agreed to a med-arb process with a single mediator, Joshua Javits. If a full agreement were not reached in mediation, two arbitrators would join the mediator to arbitrate the remaining matters in dispute. A three-arbitrator panel was established with Joshua Javits, Richard Bloch, and Frederic Horowitz. After a weeklong hearing, the panel issued its findings and the award. The central issue before the panel was whether Alaska, which accounted for 5 percent of industry revenues, should pay its pilots the same rates as those being paid by the Big 3 airlines, which each had 20 percent of industry revenues as well as vastly more aircraft, routes and destinations. The panel found: "The evidence in this case warrants a conclusion that (1) this is an enterprise that differs markedly, in various respects, from the larger carriers and that, significantly, (2) that difference has been routinely recognized by the parties themselves."

Within six months of the Alaska finding, two smaller major airline pilot collective bargaining negotiations were settled and ratified, JetBlue and Spirit. This speaks to the nature of pattern bargaining in the airline industry.

Compass/ALPA Med-Arb (2007 and 2012-2013). After its bankruptcy, Northwest Airlines created Compass Airlines as a regional airline. NWA and ALPA agreed to a med-arb process to resolve their

collective bargaining dispute in 2007 [43] and agreed to it again for their 2012- 2013 round of bargaining.

The 2012-2013 process involved strict timeframes of less than one year in total for direct negotiations, mediation and interest arbitration. This timeframe compares favorably with a typical flight crew negotiation of two or three years.

In the mediation phase, the med-arb (Joshua Javits) helped the parties define the scope of an "issue" and identify the comparative carriers for purposes of setting pay rates. The parties made extensive and successful use of subject-matter experts—small groups to address technical issues such as training and scheduling. Only a few key issues remained at the end of the mediation process, and the parties were not far apart on those. The med-arb issued a decision, which precluded the necessity of a ratification vote.

Continental Airlines Pilots/United Airlines Pilots Retroactive Lump-Sum Allocation (2012). The merger of Continental Airlines (CAL) and UAL required UAL, as the surviving carrier, to reach a joint collective bargaining agreement with the combined pilot group. That joint agreement included a $400 million retroactive lump-sum

payment to the combined pilot group. The representatives of the two pilot groups could not agree on the proper allocation of the money, so they agreed to interest arbitration before NAA member Ira Jaffe. The union parties presented extensive analytical and financial data at hearings on November 1 and 2 and asked that a decision be rendered by noon on the following Monday, November 5. Jaffe met the deadline and issued a 26-page decision that considered both the lump-sum payment and retroactive purposes of the money; the pre-joint collective bargaining agreement wage rates of the pilot groups, including the values of work rule trade-offs related to those wage rates; the hours flown by the two groups; the negotiating history; differences in retirement contributions; and an ALPA technical analysis. He concluded that a split of $175 million to the CAL pilots and $225 million to the UAL pilots was fair and equitable. The parties were able to move to the next phase of the merger process, seniority list integration.

ExpressJet/Atlantic Southeast Airlines Interest Arbitration (2020).

After nearly 10 years of bargaining and a merger, ASA and the IAM— representing flight attendants—could not reach an agreement following two failed tentative agreements. The parties agreed to submit the dispute to binding interest arbitration before NAA member Charlotte Gold. The arbitration was conducted using the last best offer (i.e., baseball style) interest arbitration process. In March 2020, Gold considered the company's proposal, the union's proposal and the failed tentative agreement, and she selected the failed tentative agreement for the parties' joint collective bargaining agreement.

Seniority List Integration Cases

Airline mergers and acquisitions produce the operational need to integrate seniority lists of all employees at the carriers involved. Following

[43] The agreement is the result of Northwest's bankruptcy restructuring. 119

AA's acquisition of Trans World Airlines (TWA) in 2001, a number of TWA pilots were stapled to the bottom of the AA pilot seniority list through an agreement between AA and the APA without the participation of TWA pilots, and similar seniority dictates were made without the involvement of the former TWA flight attendants. Congress then passed the McCaskill-Bond Act. [44] This 2007 amendment to federal aviation legislation requires a fair and equitable process for seniority integrations. Although this broad standard became the touchstone for subsequent mergers, especially regarding process, it by no means constituted a substantive roadmap or formula for decisions.

NAA arbitrators have had their work cut out for them in seniority list integration cases. A sampling of the major cases in the last 25 years reveals how the respective arbitrators addressed some of the issues.

Pilot Seniority List Integration Cases. Pilot seniority list integrations are by far the most contentious, because seniority substantially affects pilots' careers in terms of aircraft flown (category), status (captain or first officer), pay, training, schedule (choice of trips), furloughs, and so forth. The internal union conflicts and resentments resulting from the seniority list integration process and resolutions can persist into the future. They have even resulted in changes in union representation on several occasions.

Although the industry has tried to make the pilot seniority list integration process more predictable, many factors have conspired to make integrating thousands of pilots extraordinarily challenging, including the:

- seniority list integrations associated with any prior mergers;
- seniority of the pilots affected; and
- context, including differing unions, the impetus for the merger or

acquisition, differences between the merging airlines, and shifting criteria for seniority list integration determinations.

Atlas/Polar (Robert Harris 2006). Atlas Air Worldwide Holdings Corp. (AAWH) was created in February 2001. It held Atlas thereafter and acquired Polar later in 2001, years before the actual consolidation of operations. In a case prior to the McCaskill-Bond legislation, the NAA arbitrator (Robert Harris) found that the date AAWH announced its intended acquisition of Polar, July 2001, was the constructive notice date (i.e., the date after which pilots hired by either airline would be integrated based on their respective date of hire). Harris found that those pilots knew or should have known when hired that eventually they would be working for an integrated airline even though that date was many years before the actual integration of operations. Therefore, the actual integration decision date (November 2006) applied only to pilots hired before the acquisition date of July 2001. The seniority list integration experience, and events related to it, led pilots to replace ALPA with the IBT.

[44] 49 U.S.C. § 42112 (b)(4) (2018). The Act requires that where a merger or an acquisition "results in the combination of crafts or classes that are subject to the Railway Labor Act," the carrier make provisions "for the integration of seniority lists in a fair and equitable manner," including negotiation with union representatives and binding arbitration in covered transactions. 120

US Airways/America West (George Nicolau 2007). The US Airways/America West case was the first case in which the parties used computer modeling to estimate the future economic consequences to pilots of various integration scenarios. The decision put all furloughed US Airways pilots below most junior America West pilots. It was based on the theory that their nonworking status, coupled with US Airways' dire financial condition at the time of the merger, meant their career expectations were much weaker than those of all America West pilots. This rationale thereby discounted the power of longevity and increased the power of status (captain or first officer) and category (aircraft type). The case led to USAPA replacing ALPA at the merged US Airways, and the new union then refused to implement the Nicolau award. This, in turn, led to extensive, heated litigation over the integration and its effects.[45] The controversy also kept the pilots from the benefits of a new collective bargaining agreement for 10 years or so while other pilot group wages were rebounding. It also led to ALPA changing its merger policy to require arbitrators to take into account multiple factors, such as longevity, status, category and career expectations.

Delta/Northwest (Richard Bloch, Dana Eischen, and Fredric Horowitz 2008). The Delta/Northwest case was decided under the prior ALPA merger policy. That merger policy reduced the impact of pilot longevity and focused on pilot status and category. However, the panel gave credit to the NWA pilot group's greater near-term expected attrition rates. NWA-ALPA's position was that a strict date-of-hire (longevity) approach should be taken. This position was supported by their view of super premium wide body flying of which NWA had proportionately more.

United/Continental (Dana Eischen, Roger Kaplan, and Dennis Nolan 2013). The United/Continental case was the first major case decided under new (i.e., post-US Airways/America West) ALPA merger policy. The Continental pilots' proposal sought the use of longevity alone and excluded consideration of status and category entirely. It also put United pilots who were on furlough at the time of the merger—plus others—at the bottom of the seniority list. United pilots argued, and the arbitrator panel agreed, that the new ALPA merger policy required consideration of longevity as well as status and category. Because the panel gave credit to longevity, contrary to the result in the US Airways/America West seniority list integration case, the decision integrated a substantial number of furloughed United pilots into the ranks of working Continental pilots. The panel also adopted the United pilots' hybrid methodology, a mathematical blend of longevity and status and category values, weighing them at various percentages to produce an integrated seniority list.

US Airways-East (former US Airways)/US Airways-West (former America West)/American (Joshua Javits, Steven Crable, and Shyam Das 2015). Prior to the seniority list integration arbitration, a preliminary arbitration board was established to determine whether APA, as the NMB- certified representative of pilots at the merged AA/US Airways carrier, could and should designate a separate merger committee to represent the interests

[45] *See*, *e.g.,* Addington v. US Airline Pilots Ass'n, 791 F.3d 967 (9th Cir. 2015). 121

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of the former America West pilots in the seniority list integration process. The board held that APA had the authority and that it was proper under the McCaskill-Bond Act, which required a fair and equitable process for seniority integration at merging carriers, for APA to do so.

American/US Airways-East/US Airways-West (Dana Eischen, David Vaughn, and Ira Jaffe 2015). The arbitrator panel declined to use the Nicolau award as the basis for first integrating the East and West pilots and then integrating that group with the American group. Even though this was not an ALPA case—APA represented AA pilots and US-APA represented US Airways pilots—the panel looked to cases decided under ALPA merger policy to structure the award and used the hybrid methodology approach adopted in the United/Continental seniority list integration case.

Alaska/Virgin America (Fredric Horowitz, Steven Crable, and Dennis Nolan 2017). The arbitrator panel used the hybrid methodology, with certain conditions and restrictions. Also, unlike in most seniority list integration cases, meaningful mediation occurred. That mediation resulted in several very constructive pre- and mid-hearing agreements and the narrowing of differences between the pilot groups' respective positions.

Flight Attendant Seniority List Integration Cases. Flight attendants have the same monthly bidding for schedules that pilots do, so seniority affects their daily work lives and compensation to a greater extent than is typical for 9 to 5 employees. However, the application of longevity based on date of hire as the vehicle for seniority integration predominates in union constitutions and agreements. AFA, the leading flight attendant union, interprets its constitution as requiring a straight date-of-hire seniority integration. Moreover, flight attendants do not have the additional status and category aspects of pilot work, so the flight attendant integration process is much more straightforward.

NWA/Delta (Dana Eischen 2008). The NWA/Delta case pitted the pre-merger Delta flight attendants, who had never been unionized, against the pre-merger Northwest Airlines flight attendants, who were represented by a committee led mostly by former AFA union leaders. AFA did not file an application with the NMB to declare the merged carrier a "single carrier," which delayed the proceeding. Disputes occurred about how the list should be constructed, but the critical issue was whether, and to what extent, a McCaskill-Bond seniority list integration proceeding could require the maintenance of rules regarding how seniority can be used.

Although seniority itself is important, the rules governing how seniority is used are what give meaning and consequence to the seniority list. As a nonunion carrier, Delta maintained that it had the prerogative to set and change to a great extent the terms and conditions of employment, including seniority rules. The pre-merger NWA flight attendant committee sought restrictions on how Delta could use seniority going forward. These scope-of-decision issues also brought up questions about prior seniority integrations and any potential vested effects. The decision addressed the scope of what could be addressed by setting the seniority list alone; it did not adjust rules governing how seniority is to be used.

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ExpressJet/Atlantic Southeast Airlines (Joshua Javits 2019). The International Association of Machinists and ExpressJet asked a third-party neutral, Joshua Javits, to oversee the seniority integration review process for the flight attendant seniority lists resulting from the merger of ExpressJet and Atlantic Southeast Airlines and affecting approximately 1,000 flight attendants. Fifty-seven protests were filed, and the neutral sent each protestor an individual determination letter regarding his or her protest.

Ground Employee Seniority List Integration Cases. Ground employees include mechanics, fleet service employees, and customer service agents. For these employees, seniority integration by date of hire is the near universal union

policy. Specific craft and lead seniority issues may come into play, among others. Yet even these issues are fairly readily resolved by the deference the McCaskill-Bond Act shows to established internal union policy, where the same union represents both groups.

United/Continental (Joshua Javits 2013-2014). The International Association of Machinists and United Airlines retained the assistance of a third-party neutral, Joshua Javits, to help research and make recommendations on the integration of the seniority lists affecting the fleet service, passenger service, and storekeeper employees of pre-merger United Airlines, Mileage Plus, Continental Airlines, and Continental Micronesia. This integration involved tens of thousands of employees.

In late 2013 the neutral issued a report and recommendations to the IAM setting forth the process that was followed and the reasons for his recommendations regarding seniority integration. The initial integrated seniority lists were published for union members' review. Prior to the issuance of that report, employees were afforded an opportunity to submit any comments or concerns they might have related to the seniority integration process. The neutral received and reviewed more than 1,000 comments from employees, and he considered these comments in making his report. In addition, the neutral conducted a fact-finding process in person and by teleconference to receive input from as many of the pre-merger groups as possible. [46]

American/US Airways (Joshua Javits 2016-2017). In a process similar to the one used for the United/Continental seniority list integration case, American/US Airways and the International Association of Machinists/Transport Workers Union retained the assistance of a third-party neutral, Joshua Javits, to help research and make recommendations on integration for the seniority lists for approximately 30,000 US Airways and American Airlines ground employees. More than 800 comments and 1,600 protests were received and answered.

[46] Following the issuance of the neutral's report and the publication of the combined seniority lists, employees were afforded an opportunity to protest their placement on the proposed lists. More than 700 protests were timely filed. Each of those protests was presented to the company, which, together with the IAM, conducted a records review; the information was then reported to the neutral. The neutral sent all 727 protesters an individual decision on their protest.

Alaska/Virgin America (Joshua Javits 2017). The IAM asked a third-party neutral, Joshua Javits, to assist in the integration of the approximately 700 Virgin America employees into the Alaska Airlines' seniority lists for clerical, office, and passenger service employees. As with the other mergers, the neutral used the IAM's long-standing policy of date of entry into classification. More than 200 protests were received as part of this integration process, 106 of which the neutral granted in whole or in part.

NAA's Success in Airline Dispute Resolution

The NAA, as an institution and through its members, has been essential to airline dispute resolution. The RLA, established by the parties themselves, elevates self-governance over litigation and agency jurisprudence, especially compared with the NLRA. The NAA is embedded in the parties' preferred internal dispute resolution processes.

Those dispute resolution processes have addressed the subtle, complex, and urgent issues confronting the airline industry during the last 25 years. Included among these issues are the historic catastrophes of 9/11 and bankruptcies; the industry consolidations following in their wake; and consequent industry responses, such as joint collective bargaining agreements and seniority list integration. NAA neutrals have succeeded in moving the parties forward through these challenges and structural changes, with flexibility, adaptability, creativity, thoughtfulness, expertise, and objectivity.

The NAA has helped stabilize this essential service industry that is so key to the nation's economy. No doubt the organization will continue to help the parties navigate appropriate solutions as the industry struggles to overcome its latest challenge—the COVID-19 pandemic.