

In the Matter of the Arbitration Between:

US AIRWAYS, INC.

AND

Health Premium Dispute

IAMAW (MECHANICS & RELATED PERSONNEL,
FLEET SERVICE, AND MAINTENANCE INSTRUCTORS)

Hearing held January 29, 2009 and March 19, 2009

Before the System Board of Adjustment

Richard Bloch, Chairman
Tony Giammarco- Union Appointed Member
Ron Harbinson - Company Appointed Member

Appearances:

For the Company:
Douglas W. Hall, Esq.
Jaclyn L. West, Esq.

For the Union:
Robert A. Bush, Esq.

OPINION

Facts

To meet a critical financial condition in 2002, US Airways (hereinafter “the Company”) turned its attention to cost cutting by, among other things, overhauling its health insurance system. At the time, the Company had some twenty differing self-insured medical plans that were costly in and of themselves and, more, represented substantial administrative expenses. To address this, the Company determined to attempt to implement a single national plan.¹

¹ Tr., p. 134.

The Company intended to continue self-insuring a single plan, funding it from its own general funds and charging participant employees “premium equivalents” instead of the normal premium payable to an outside insurer. Premium equivalents were, prior to 2002, calculated annually by collecting information on demographics, planned fleet size and claims experience from the prior year among other things. Based on this, and other information,² each year the Company would generate figures representing the following year’s health care costs. The relevant contract provisions³ stated, in relevant portion:

... The Company’s cost and the Employee’s cost shall be established in advance each year by the third-party administrator by estimating the Company’s costs for claims and expenses anticipated to be incurred for the upcoming year for medical and dental costs.

During concessionary negotiations that began in mid-2002, the Company changed the method by which it calculated the premium equivalent. The revised methodology involved a multi-year projection, reflected by the following change to the applicable contracts:

... The Employee’s costs shall be established in advance and are reflected in Attachment A.

As projected in Attachment A, no change was made for 2003; but, beginning in 2004, and continuing through 2008, the previous year’s premium equivalent would be multiplied by an estimated⁴ “trend figure” to arrive at a given year’s premium

² See Tr., pp. 137-138.

³ See Article 22 of both the 1990 and 1995 IAM Agreements, (Machinists and Mechanical and Related personnel).

⁴ The estimation was provided by outside consultants.

equivalent. According to the evidence,⁵ the Company was informed the trend figures, as of mid-2002, were 13% for both 2004 and 2005, 11% for 2006, 9% for 2007 and 7% for 2008.

With this estimate for future health cost activity, the Company approached its Unions in order to negotiate the percentage of the calculated premium equivalent to be paid by bargaining unit members.⁶ In all cases, the bargaining was directed solely to the question of the fractional percentage of the premium equivalent to be paid by the employee. There was no bargaining either on the calculation of the premium equivalent itself or on the trending projections.⁷ Ultimately, the Company and IAM agreed that, with respect to the three PPO coverages available at the time, the Union member would pay 7, 13 and 17 percent, respectively.⁸

The parties' expectations that this type restructuring would provide meaningful relief was short-lived, because the estimates were turning out to have been understated.⁹ In November of 2002, therefore, the Company sought additional concessions from the Unions.

In January of 2003, the Company and IAM concluded negotiations over additional restructuring, with IAM employees paying, according to a Second

⁵ See Co. Ex. 2, 3.

⁶ The record reflects, for example, that ALPA and the Company agreed the Pilots would pay 10% of the premium for a so-called "80% PPO," "18% for a 90% PPO," and "22% of the 100% PPO." See Co. Ex. 2; Tr., pp. 145-146.

⁷ See Tr., p. 148.

⁸ See Co. Ex. 3.

⁹ The revised trends supplied by the Consultants to the Company now showed increases of 15% for 2004 and 2005, 14% for 2006, 13% for 2007 and 12% for 2008.

Restructuring Agreement, 7, 14 and 19.4 percent for the three PPO options.

Significantly, these arrangements covered the years 2003 to 2008.

The labor agreements were extended in 2004. In 2004, concurrent with the Company's filing its second Chapter 11 bankruptcy petition, the parties extended the contracts' duration from December 31, 2008 to December 31, 2009. The health insurance provisions, however, in Article 22 and Attachment A, were not modified. There, in this case, is the contractual rub. In August of 2008, the Company contacted the Union, indicating it was intending, for years 2009 and beyond, to reinstitute the previous actuarially-based method used in calculating premium equivalents. Thus, the Company would discontinue its reliance on trend projections and return to the annual calculations.¹⁰

The Union here contends that, absent a negotiated change concerning employee health insurance costs for 2009 and beyond, the Company must retain the same dollar contribution level as that in effect through 2008; until mutual agreement is achieved on some other system. The Company, for its part, claims that, absent any contractual direction to the contrary, it may revert back to the method it employed prior to the modifications described above.

¹⁰ See Jt. Ex. 1, *see also* Co. Exs. 6, 7. By letter to the Union in late August, the Company advised that, for 2009, the actuarial analysis would yield an 8% decrease for medical contributions and a 20% decrease for dental contributions. According to the record, the reduction was the result of a somewhat inflated projection of health insurance cost increases and the merger with America West, with a corresponding increase in the covered employees' population.

Issue

Did the Company violate the Collective Bargaining Agreement when, in 2008, it reverted to an annual actuarial analysis for establishing employee premium costs?

Union Position

The Union says the 2008 employee contribution levels must remain frozen and in place until such time as the parties agree to a replacement. Management failed to obtain changes to the health insurance language: If it wished to modify the manner in which contributions were to be calculated after 2008, it should have proposed such change. Accordingly, it requests the System Board to rule in its favor and maintain the same premium costs as those established for 2008, until the parties negotiate otherwise.¹¹

Company Position

The Union, says the Company, has failed to meet its burden of proving any agreement to freeze the employee portion of health insurance costs at the 2008 level. Such outcome was never discussed between the parties during bargaining and, it is claimed, the IAM's interpretation is inconsistent with language directed to the premium percentage that was to become the employees' responsibility. Absent any bargained language to the contrary, the Company was within its rights in reverting back to the system previously in place. That decision constituted a reasonable exercise of the Company's managerial rights and should be sustained, it is claimed. The Company requests, therefore, that the grievance be denied.

¹¹ Un. post-hearing brief, p. 5.

Analysis

Resolution of this dispute turns on a review of the nature of the obligations at issue and of their source. The Company's new approach was first offered the Union on June 27, 2002. The Company had earlier proposed, and the parties had explored, a mechanism to deal with increasing health insurance costs by having the Company absorb the first 5% with additional (but unknown) increases to be split equally between the Company and the workers. The new proposal was designed to meet the Union's objection about buying a pig in a poke. Thus, instead of basing the employee's percentage on an unknown number, the proposal set forth specific dollar figures the employees would pay throughout the contract.¹²

Both the Fleet Service and the Mechanics and Related Agreements were modified to incorporate the new mechanism and, accordingly, Article 22 of the 1990 and 1995 contracts were modified, changing language reflecting that the premium equivalent would be calculated in advance "each year," to language providing that, "the employees' costs shall be established in advance and are reflected in Attachment A [the chart containing the trends and the specific premium equivalent dollar costs]". As such, the parties discussed and ultimately agreed on a type of forecasting system that would adopt "trends", as reported by outside consultants, that would lead to calculating overall future health care costs: By their applying negotiated percentage rates, one generates specific dollar costs for the premium equivalents for each of the years 2003-2008. The parties

¹² Compare Un. Ex 7 to Un. Exs. 8 and 9. Originally, the trend projections and the listed premium equivalents were provided for years beginning 2003 and extending through 2009. But a subsequent August 2002 proposal, the one ultimately agreed upon, was modified to have the provision run through 2008. (See Un. Ex 1, Attachment C.)

understood, and agreed, that the January 2003 Restructuring Agreement served to modify the existing collective bargaining agreements to the extent indicated in the Restructuring Agreement, but beyond that, it left the basic agreements unaffected.

There is some logic to the Union's contention that, all things being equal, the new calculation system that projected costs for the entire contract term should have existed at all times during the term of the contract. By this approach, absent more, one might well contend the Company had violated the Agreement by retreating, for 2009, to the annual calculation method. The problem with this approach lies in the fact the parties' 2004 agreement to extend the CBA's to 2009 did not include the Attachments. This resulted, in effect, in a situation where that portion of the contracts dealing with health care contributions sunsetted while the labor agreements remained in effect.¹³ The reasonable question – and the one posed here for the Board's consideration – is: "What then?" In this case, both parties claim it was incumbent upon the other side to negotiate the outcome it here seeks. Indeed, each side accuses the other of attempting to obtain through arbitration a benefit it could not successfully negotiate.¹⁴

There is force to management's argument that, absent any mutually agreed provision, the Company maintained discretion to determine, subject only to an obligation to act in good faith,¹⁵ the continuing process. Alternatively, one might

¹³ As the Union notes, in its brief: "The problem, of course, is that the chart only covers the period of time ending in 2008." (Union brief, p. 20.)

¹⁴ The Company says the Union is "engaged in a blatant 'land grab,' attempting to obtain through arbitration something it knows full well it did not get in negotiations." (Co. closing Br., p. 2.) The Union, for its part, claims that, "If the Company wished to change how contributions are calculated after 2008, they should have proposed such a change. They did not do so, and cannot now obtain through arbitration what they did not even attempt to establish through negotiation." (Un. closing brief, p. 5.)

¹⁵ Co. brief, p. 26.

conclude the parties somehow understood the result-year projection to be a bargained interim measure that would temporarily replace the previous annual actuarially-based calculations. Nothing in the record, however, suggests the parties intended to abandon a consistent understanding, without regard to the particular calculation system in place, that the intent was to respond to the spectre of increasing health care costs by having employees contribute on a percentage basis. Surely, the least apparent choice, in the context of rapidly escalating health costs, a company *in extremis* and parties who had gone to the edge of an economic cliff before finding mutually satisfactory answers, would be a system that froze payments at the 2008 level with no mechanism for responding to the various issues that had given rise to the earlier sets of distressed-based bargaining. Without question, none of this was discussed.

In summary, the Union, in this case, has not sustained its burden of demonstrating that the collective bargaining agreements at issue required the result here sought. In 2002, the parties negotiated a system that would provide certainty as to the specific premium equivalent contributions by bargaining unit employees. The mechanism involved, among other things, projections based on trends and, at the time of the negotiation, it was likely anticipated the mechanism would exist for the term of the labor agreements. Subsequently, as indicated above, the parties extended the contract terms without modifying, or even discussing, the health care costing provisions at issue. The Union urges this Board to extend the 2008 contribution dollar amounts, contending this is the only way to honor the intent and agreement of the contracting parties. But the stated intent was to extend the stated dollar amounts through 2008; that is what the agreements say. Moreover, the stated dollar amounts themselves were

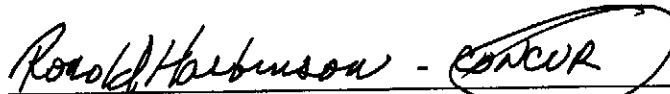
not the direct product of negotiations; rather, as indicated above, they were from application of bargained trend percentages applied to projected costs. There is no support for the claim the parties intended, as a default, to extend the product of the calculation process only, *sans* any of the underlying calculation assumptions. Indeed, as indicated above, there is no indication the parties intended to extended the bargained contribution levels at all. The language of Attachment A requires the contrary conclusion. The Company has filled this contractual gap by reinstating the previous mechanism. This action was not unreasonable either in its concept or its application. More importantly this was an action that, while concededly not reflected in the bargained language (and most likely not specifically anticipated by the parties) is nevertheless nowhere precluded under the labor agreement. For these reasons, the finding is that the grievance must be denied.

AWARD

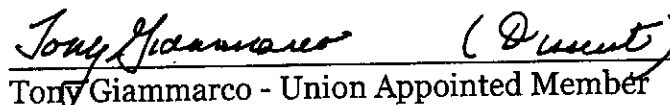
The grievance is denied.



Richard I. Bloch, Esq.



Ron Harbinson - Company Appointed Member



Tony Giammarco - Union Appointed Member

July 27, 2009