

*In the Matter of the
Seniority Integration Process Involving*

Clerical, Office, and Passenger Service
Employees of Pre-merger Alaska Airlines and
Virgin America

Represented by:
International Association of Machinists and
Aerospace Workers, AFL-CIO

**NEUTRAL'S REPORT AND RECOMMENDATIONS
REGARDING SENIORITY INTEGRATION**

Issued by:

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INTRODUCTION

The undersigned Neutral was appointed by agreement between Alaska Airlines, Inc. (“Alaska”), Virgin America Inc. (“Virgin America”), and the International Association of Machinists and Aerospace Workers, AFL-CIO (“IAM” or “Union”) to make a Report and Recommendations to the IAM to resolve seniority integration issues affecting represented employees of pre-merger Alaska and pre-merger Virgin America.¹ This Report and the proposed seniority lists published in conjunction with it represent the product of a careful and detailed process.

As set forth more fully below, I engaged in an extensive fact-finding process, first collecting all necessary data from the pre-merger airlines, meeting with employee representatives from the various work groups involved, and reviewing comments from affected employees. Through this process, I identified the principle issues to be resolved with respect to seniority integration. For the most part, this seniority integration involves the straightforward application of the IAM’s internal policy to integrate seniority based on date of entry into classification. In the case of Virgin America employees, I have determined that their Department Seniority dates are equivalent to Classification Seniority at Alaska. However, because Virgin America employees did not maintain separate Lead

¹ I served as Chairman and Member of the National Mediation Board from 1988-1993. I have practiced as an arbitrator and mediator since 2001. I serve on arbitration panels of the American Arbitration Association, the Federal Mediation and Conciliatory Service, and numerous airline and non-airline permanent arbitration panels. I have also been appointed by several Presidents of the United States to serve on Presidential Emergency Boards formed pursuant to the Railway Labor Act. In addition, I have been an adjunct professor of Labor Arbitration and Alternative Dispute Resolution at the Georgetown University Law Center.

Seniority in the past, I have determined that Virgin America leads should be assigned new Lead Seniority dates equivalent to the date when each first entered Lead service. Lastly, I have determined that ties in seniority on the merged lists should be broken in accordance with the tie-breaking rules set forth in the collective bargaining agreement covering Alaska's Clerical, Office, and Passenger Service employees.

Following the issuance of this Report, employees will have a 45-day opportunity to protest their placement on the proposed integrated seniority lists. I will investigate each protest and issue a final determination as to each before final integrated seniority lists are published. Through this process, I am confident that the fairest and most equitable seniority integration will be achieved.

FACTUAL BACKGROUND

1. Pre-Merger History and Employee Representation

As reflected in the "Different Works" tagline used in customer communications regarding the merger, the current transaction brings together two airlines with very different histories. Founded in 1932 as McGee Airways, Alaska is one of the oldest legacy carriers currently in operation. Alaska is headquartered in Seattle, Washington, with a focus on providing service to and from West Coast destinations. Alaska carries 32 million passengers annually, and at the time of the merger operated 990 daily departures to 116 destinations, using a fleet of 223 aircraft. Press Release, "Alaska Air Group closes

acquisition of Virgin America, becomes the 5th largest U.S. airline,” (Dec. 15, 2016).² In total, Alaska had 15,600 employees as of the merger. *Id.* The IAM has long represented Alaska’s approximately 3,700 clerical, office, passenger service, fleet service, and stores employees pursuant to certification R-4416 which was issued by the National Mediation Board in 1974.

In contrast, Virgin America is a much newer and smaller airline. Virgin America was founded in 2004 and began operations in 2007. Virgin’s headquarters were in Burlingame, California in the San Francisco Bay area. Like Alaska, its operations were focused on the West Coast. Virgin America served 8 million passengers per year at the time of the merger, with 197 daily flights to 24 destinations, employing a fleet of 63 aircraft. *Id.* The Carrier had 3,200 employees overall. *Id.* Prior to the merger, Virgin America’s approximately 700 clerical, office, and passenger service employees were unrepresented, but the IAM became the representative of these employees pursuant to a voluntary recognition on December 14, 2016, the effective date of the merger’s close. Virgin America has no employees performing ramp or stores work.

2. The Alaska/Virgin America Merger and the Merger Transition Agreements Reached with IAM

On April 1, 2016, Alaska Air Group, Inc. (“AAG”) parent company of Alaska, and Virgin America entered into a Merger Agreement, which was implemented on December

² Available at https://newsroom.alaskaair.com/2016-12-14-Alaska-Air-Group-closes-acquisition-of-Virgin-America-becomes-the-5th-largest-U-S-airline#assets_118.

14, 2016 after obtaining required shareholder and government approvals. The IAM, Alaska, and Virgin America entered into an Agreement which also became effective upon the merger close date, December 14, 2016. As part of this Agreement, Virgin America voluntarily recognized the IAM as the representative of its clerical, office, passenger service, fleet, and stores employees. Subsequently, Virgin America advised the IAM that it does not currently have any fleet or stores employees. The parties further agreed that the terms of the current IAM-Alaska collective bargaining agreement (“CBA”) for clerical, office, and passenger service (“COPS”) employees would be applied to the equivalent Virgin America employees in accordance with a timeline and terms to be negotiated subsequently.

In their Agreement, the parties also set forth a process for seniority integration in accordance with the principles of “fair and equitable” integration as provided under Sections 3 and 13 of the Allegheny-Mohawk labor protective provisions, 59 C.A.B. 19, 45 (1972), and the McCaskill-Bond Amendment, Pub. L. 110-161, Div. K, Title I, § 117, Dec. 26, 2007, 121 Stat. 2383, codified at § 42112, note. Under the terms of the Agreement, the IAM appointed me as a Neutral to conduct fact-finding and mediation, and to make recommendations to the Union regarding the integration of seniority lists and to resolve any issues. The parties agreed that integrated lists would conform to the IAM’s internal policy of seniority integration in accordance with date of entry into classification, except to the extent that I might determine that a fair and equitable integration required a different approach.

On February 18, 2017, Alaska and the IAM finalized a Transition Agreement detailing the procedure and timeline for bringing Virgin America COPS employees under the terms of the Alaska-IAM COPS CBA. Most CBA provisions became applicable to Virgin America employees within 180 days of the Transition Agreement's execution. However, the Transition Agreement provides that the seniority provisions contained in Article 9 of the COPS CBA do not apply to Virgin America employees until 30 days after the publication of final integrated seniority lists, with the exception that time spent working for Virgin America would be used to compute the probationary hours threshold under the COPS CBA. The Transition Agreement further specifies that: "Seniority time that has previously been lost at either carrier shall not be reestablished by operation of this agreement."

3. The NMB's Single-Carrier Proceedings

Pursuant to its authority under the Railway Labor Act ("RLA"), the National Mediation Board ("NMB" or "Board") has developed procedures to decide union representation issues raised as a result of corporate mergers or consolidations. The Board's procedures are commonly known as single-carrier proceedings, in which the NMB determines whether the merging carriers have sufficiently integrated their operations to be considered a single transportation system for the purposes of union representation. *See* NMB Representation Manual, § 19.5. The NMB conducts its single-carrier proceedings on a craft-by-craft basis. If the NMB determines that a merger has resulted in the formation of a single transportation system for a particular craft, the Board will determine how the

merger impacts existing representation certifications previously issued by the Agency and other representation issues.

On February 10, 2017, the IAM filed an application with the NMB initiating a single carrier proceeding and requesting that its certification as the representative of Alaska employees be extended to the combined workforce of the merged Carrier. On April 6, 2017, the NMB granted the IAM's single carrier application, finding that Alaska and Virgin America now constitute a single transportation system for the purposes of employee representation. *Alaska Airlines, Inc./Virgin America, Inc.*, 44 NMB 49 (2017). According to its standard practice, the Board provided a 30-day period for any intervenor to make a showing of interest sufficient to trigger a representation election among the combined workforce. *Id.* at 62. No organization filed to intervene. Therefore, on May 8, 2017, the NMB issued a determination recognizing the IAM as the certified representative for all COPS employees at the merged Carrier. *Alaska Airlines, Inc./Virgin America, Inc.*, 44 NMB 97 (2017).

4. Pre-Merger Seniority Systems

a. Pre-Merger Seniority at Alaska

The terms and conditions of employment for Alaska's COPS employees is governed by the IAM-Alaska collective bargaining agreement ("CBA"). Alaska and the IAM entered into the current CBA on May 22, 2014, and it becomes amendable on January 1, 2019. The current CBA and its predecessor agreements contain detailed provisions governing the accrual and use of seniority.

All newly hired COPS employees must complete a probationary period before being placed on a seniority list. For full-time employees, the probationary period is 1,040 hours; for part-time employees, the probationary period is 780 hours. Once the probationary period is completed, the employee is placed on a seniority list retroactive to the date upon which he or she was originally hired. Once added to the seniority list, part-time employees accrue seniority on the same basis as full-time employees.

Under the CBA, there are two types of seniority, “Company Seniority” and “Classification Seniority.” Company Seniority begins to accrue when a COPS employee is hired by the Company, regardless of whether he or she was originally hired under the COPS CBA or not. In the case of an employee who is rehired, Company Seniority begins to accrue as of the date of rehire. If two or more employees have the same Company Seniority date, then the seniority order among them is established by date of birth with the eldest employee holding the greater seniority.

Company Seniority is used for several purposes under the CBA. Most significantly, annual vacation bidding is done according to Company Seniority. Requests for day-at-a-time and hour-at-a-time vacation usage are also granted in order of Company Seniority. In addition, overtime is assigned to qualified volunteers in order of Company Seniority at each bid location. If emergency overtime is declined by all eligible employees at a location, employees may be assigned in inverse order of Company Seniority, meaning that the most junior employee is assigned, provided that he or she has not been required to work overtime in the prior two calendar days. Similarly, volunteers to work on holidays are chosen according to Company Seniority. If more than one employee requests a leave of absence

for the same time period for similar reasons, leave will be granted in order of Company Seniority.

Under the COPS CBA, work is classified as falling within the Clerical Division or within the Agent Division. Work within the Clerical Division is further divided into nine classifications, as follows: Lead Work Control Specialist; Work Control Specialist; Lead Accounting Specialist; Accounting Specialist; Records Specialist; Manuals Specialist; Lead Mail Specialist; Mail Specialist; Crew Scheduling Specialist. Within the Agent Division, the work is divided among the following 14 classifications: Lead Crew Scheduler; Crew Scheduler; Lead Operations Agent; Operations Agent; Lead Station Agent; Station Agent; Lead Customer Service Agent; Customer Service Agent; Lead Cargo System Control Agent; Cargo System Control Agent; Lead Central Reservations Control Agent; Central Reservations Control Agent; Lead Reservations Sales Agent; Reservations Sales Agent. Thus, there are 23 separate classifications in total under the COPS Agreement. The CBA gives detailed job descriptions for each classification.

Classification Seniority begins to accrue either when an employee first enters a classification on a regular assignment or when a bid is awarded to fill a vacancy. If an employee chooses to bid for a position in another classification covered by the COPS Agreement, he or she will continue to retain and accrue seniority in his or her former classification. Likewise, if an employee involuntarily leaves a position within a classification and accepts a position within another classification under the COPS Agreement, he or she will continue to retain and accrue seniority in the former classification. As a result, COPS employees may hold seniority in multiple classifications

and appear on multiple seniority lists. If two or more employees have the same Classification Seniority date, then the seniority order among them is established first by the earliest Company Seniority date and, if necessary, then by date of birth.

Under the CBA, Classification Seniority governs the order in which COPS employees are furloughed and subsequently recalled. The CBA also contains detailed rules for bidding on vacant positions and shifts. Vacancies are awarded in seniority order among employees with a valid preference bid on file, according to the following sequence:

- 1) The most senior bidder at the station holding seniority in the classification in which the vacancy exists;
- 2) The most senior bidder in the system holding seniority in the classification in which the vacancy exists;
- 3) The most senior bidder holding seniority in the Division (i.e. Clerical or Agent) in which the vacancy exists;
- 4) The most senior bidder holding seniority in either the Clerical or Agent Division.

Shift bidding, which is referred to as “realignment” under the CBA, occurs three times per year for employees in the Agent Division and two times per year in the Clerical Division. At each bid location, employees select shifts and days off in order of their Classification Seniority. In addition, where applicable, home agent positions are awarded based upon Classification Seniority and home agents bid for shifts among themselves using Classification Seniority.

Under the COPS CBA, the Company is required to publish seniority lists at each location three times annually: January 1, May 1, and September 1. Following publication, an employee has 60 days to protest his or her placement on the list. The burden of proof

rests with the protesting employee to show that an error has occurred. If an employee's protest is granted, there are no retroactive adjustments to seniority, only the correction of the seniority lists going forward.

An employee may be granted a personal leave of absence under the COPS Agreement for a period of one year, which may be extended to two years under extraordinary circumstances. However, an employee on personal leave will only continue to accrue seniority for a period of 90 days, and thereafter will only retain seniority for the approved duration of the leave. During medical, maternity, and military leaves of absence, an employee continues to accrue and retain seniority for the maximum duration of the leave. An employee may also be granted an indefinite leave of absence to hold elective office in government or a full-time union position with seniority accruing and retained throughout the entire leave.

Under various circumstances, an employee can lose his or her seniority status, resulting in removal from all applicable seniority lists. An employee loses seniority due to resignation, discharge for cause, or an unexcused absence for two or more consecutive days. A furloughed employee loses seniority if he or she fails to exercise seniority to another available position in accordance with the applicable CBA provisions, or if the furlougee fails to give timely notice of intent to accept an offer to return to service or subsequently fails to return to service on the specified start date. An employee who is on furlough for more than 60 months also loses seniority.

If an employee takes a position within the Company not covered under the COPS CBA, he or she continues to retain and accrue Classification Seniority for a period of 90

days during which he or she has the option to return to the former position. After this 90-day period, an employee continues to retain (but not accrue) Classification Seniority for a period of one year. If the employee is laid-off during this one-year period, he or she may bid a vacancy exercising his or her retained Classification Seniority. After one year, however, the employee is removed from all COPS seniority lists.

b. Pre-Merger Seniority at Virgin America

At Virgin America, COPS employees were unrepresented. Therefore, seniority matters were dictated by company policies, not a collective bargaining agreement. Under Virgin America's policies, seniority was used for a variety of purposes. These policies applied company-wide and remained essentially the same over time, even though management could have made changes if it had chosen to do so. Virgin America maintained several manuals reflecting its seniority policies for COPS employees. "The Playbook" contained seniority policies applicable to employees company-wide. In addition, the Company had "Guest Services Teammate Work Rules" and "Crew Member Support Services (CSS) Internal Work Rules," which also contained provisions related to seniority.

Under Virgin America's policies, there were essentially two types of seniority, "Company Seniority" and "Department Seniority." Company Seniority was used primarily for pay purposes, but also for pass travel. Under some circumstances, an employee who resigned from Virgin America and later returned could have his or her Company Seniority partially restored, provided that the period of separation did not exceed the employee's prior service or a maximum of three years. Upon an eligible employee's return to service,

his or her Company Seniority date would be adjusted to exclude the period of separation. Virgin America referred to this policy of restoring Company Seniority as “Bridging Time.”

For Virgin America’s COPS employees, Department Seniority was used for all competitive bidding purposes, such as bidding on schedules and vacations. Department Seniority was established when an employee first began working in or was transferred to the Department. Guest Services, Crew Scheduling, and Reservations each constituted separate Departments under the Virgin America system. For employees with the same Department Seniority date, ties were broken using the employee identification number randomly assigned to each employee upon hire, with the lowest employee number holding the greater seniority.

An employee who left his or her Department, either to work in another Department or after resigning from the Company, could retain Department Seniority for a period up to 15 months, but would not continue to accrue Department Seniority during this time. If the employee returned to the Department during the 15-month period, his or her Department Seniority date would be adjusted to exclude the time outside of the Department. Separate Department Seniority lists were maintained at each station where Virgin America employees worked, and local management was responsible for maintaining these lists. The Company provided copies of these Department Seniority lists for my review as part of the seniority integration process. In a few instances, it was found that the Department Seniority lists were erroneous. In some instances, the lists provided seniority dates which differed by a day or two from the dates found in the central records maintained by Virgin America’s

human resources department. In a few instances, the Department Seniority lists did not reflect adjustments to seniority for time spent working outside of the department.

During the seniority integration process, it was determined that there are eight Virgin America job titles in which employees perform work equivalent to Alaska COPS employees. Those job titles are: Guest Services Teammate, Lead Guest Services Teammate, Guest Relations Agent – Central Baggage, Crew Scheduler, Lead Crew Scheduler, Reservations Systems Analyst, Senior Reservations Systems Analyst, and HQ Contact Center Lead. Although Virgin America had separate Lead positions, employees in those positions did not have separate seniority dates as Leads. Instead, Virgin America Leads continued to use their Department Seniority dates while working in a Lead position.

THE SENIORITY INTEGRATION PROCESS

1. McCaskill-Bond Seniority Integration Statute

On December 26, 2007, the Consolidated Appropriations Act of 2008 was signed into law. Pub. L. No. 110-161. Among the bill's provisions was Section 117, which has come to be known as the "McCaskill-Bond" statute and establishes seniority protections in the context of airline mergers and consolidations. The legislation was originally introduced by two Missouri Senators, Claire McCaskill and Christopher "Kit" Bond. It is generally understood that the legislation was passed in reaction to the handling of seniority for Trans World Airline ("TWA") employees during the American-TWA transaction. TWA employees generally did not retain their TWA seniority following the airline's acquisition by American and instead were placed at the bottom of merged seniority lists as if newly hired.

The McCaskill-Bond statute requires that employee seniority lists be integrated in a “fair and equitable” manner whenever the assets or equity of an air carrier are transferred to or combined with another, and two separate employee workgroups are combined under the Railway Labor Act. 49 U.S.C. § 42112, note § 117(a), (b). When a workgroup is represented by different unions or is unrepresented at one carrier, then the McCaskill-Bond statute requires the mediation/arbitration procedure first adopted by the former Civil Aeronautics Board in the Allegheny-Mohawk merger. However, when the same union represents the combined workforce, then the McCaskill-Bond statute mandates that the “collective bargaining agent’s internal policies regarding integration, if any, will not be affected by and will supersede” the Allegheny-Mohawk procedures.³ 49 U.S.C. § 42112,

³ The McCaskill-Bond statute provides in relevant part:

- (a) Labor integration. With respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act (45 U.S.C. 151 et seq.), sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers; except that—
- (1) if the same collective bargaining agent represents the combining crafts or classes at each of the covered air carriers, that collective bargaining agent’s internal policies regarding integration, if any, will not be affected by and will supersede the requirements of this section; and
 - (2) the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered air carrier shall not be affected by the requirements of this section as to the employees covered by that agreement, so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions.

49 U.S.C. § 42112, note § 117.

note § 117(a)(1). Thus, the law recognizes that where there is a single representative of affected employees, seniority integration is an internal union matter to be handled in accordance with union policy.

In this matter, the IAM represents all employees in the combined workgroup of COPS employees. Accordingly, the IAM’s internal policy must be applied to integrate the seniority of these employees under the requirements of the McCaskill-Bond statute.

2. The IAM’s Internal Seniority Integration Policy

In seniority integrations, the IAM’s long-established internal policy is to merge seniority according to date of entry into classification. This method of combining seniority lists is sometimes referred to as “dovetailing,” as opposed to “end tailing” where one group is simply added to the end of the seniority list of the other group. The IAM’s method works as indicated in the following example.

Original seniority dates at the separate carriers:

<u>Carrier A</u>	<u>Classification Entry Date</u>	<u>Carrier B</u>	<u>Classification Entry Date</u>
Employee A-1	08/01/1982	Employee B-1	09/30/1980
Employee A-2	02/03/1983	Employee B-2	12/01/1992
Employee A-3	04/15/1999	Employee B-3	10/17/1993
Employee A-4	07/01/2011	Employee B-4	03/05/1995
Employee A-5	11/12/2012	Employee B-5	08/04/2011

Dovetailing results in the following merged list:

Employee B-1	09/30/1980
Employee A-1	08/01/1982
Employee A-2	02/03/1983
Employee B-2	12/01/1992
Employee B-3	10/17/1993
Employee B-4	03/05/1995
Employee A-3	04/15/1999
Employee A-4	07/01/2011
Employee B-5	08/04/2011
Employee A-5	11/12/2012

The IAM has consistently applied its internal policy in mergers where it was or became the certified representative of the same crafts at the two merging carriers. For example, the IAM has integrated seniority by entry date in the following mergers: American Airlines/US Airways (mechanics and related; fleet service; stores); United Air Lines/Continental Airlines (fleet service; passenger service; stores); Southwest Airlines/AirTran Airways (passenger service); US Airways/America West (fleet service; mechanics and related; stores); Trans World Airlines/Ozark Airlines (fleet service; mechanics and related); Northwest Airlines/Republic Airlines (fleet service; mechanics and related); US Airways/Piedmont Airlines (mechanics and related); US Airways/Pacific Southwest Airlines (mechanics and related); Piedmont Airlines/Empire Airlines. Thus, the IAM has consistently advocated and applied its seniority integration policy regardless of the details of the merger. The IAM has implemented seniority integrations based on entry date whenever it has been in a position to legally require it.⁴

⁴ Even in those cases where the IAM is not the surviving representative, the Union has adhered to its position that seniority should be integrated according to date of

Courts, arbitration panels, and commentators have all acknowledged that the IAM adheres to an internal policy of seniority integration according to date of entry. *See Ramey v. IAM*, 2002 WL 32152292, *2 (E.D.N.Y. 2002) (“In combining workforces from two merging entities, IAM has generally insisted on the date of personnel’s entry into a job classification.”); *In re TWU Local 555 and IAM, District Lodge 142 and Southwest Airlines Co.*, at *14 (Ira Jaffe, Chair, June 4, 2012) (discussing IAM policy of date of entry dovetailing); Darin Lee & Ethan Singer, *Interpreting the “Fair and Equitable” Standard in Labor Force Seniority Integration*, at 8 n.14 (Nov. 21, 2011) (“Date of hire is the defined merger polic[y] of ... the International Association of Machinists and Aerospace Workers”).

This method of “dovetailing” seniority by date of entry into classification is widely recognized as a fair and equitable method of seniority integration. *See Humphrey v. Moore*, 375 U.S. 335, 347 (1964) (finding dovetailing “. . . neither unique nor arbitrary. On the contrary, it is a familiar and frequently equitable solution to the inevitably conflicting interests which arise in the wake of a merger . . .”); *In re ABF Freight System, Inc., Labor Contract Litig.*, 988 F. Supp. 556, 566 (D. Md. 1997) (“Case law has recognized that dovetailing is an appropriate and fair way to resolve the problem presented when seniority rights are affected by the combining of the operations of two or more companies . . .”); *Wheeler v. Bhd. of Locomotive Firemen & Enginemen*, 324 F. Supp. 818, 827 (D.S.C.

hire. Examples include the following mergers: Southwest Airlines/AirTran Airways (fleet service); Delta Air Lines/Northwest Airlines (clerical, office, fleet and passenger service); American Airlines/Trans World Airlines (mechanics and related).

1971) (recognizing dovetailing as method “to distribute the work opportunities on an equal basis throughout the merged system”); *Nat’l Airlines Acquisition*, 94 C.A.B. 433 (1982) (dovetailing seniority lists satisfies fair and equitable standard).

3. The Seniority Integration Process

As discussed above, Alaska, Virgin America, and the IAM entered into an agreement regarding the integration of seniority lists which became effective upon the merger close date of December 14, 2016. Pursuant to the agreement, the IAM appointed me to act as a Neutral to mediate and make recommendations regarding seniority integration and to resolve any issues. Also by agreement, I was to be assisted throughout the integration process by the Washington, DC law firm of Guerrieri, Clayman, Bartos, Parcelli & Roma, P.C., which has extensive experience in airline seniority matters.

The initial phase of the process outlined in the agreement called for me to engage in fact-finding to understand employees’ current seniority arrangements at both pre-merger Carriers and identify potential issues impacting the integration of seniority lists. As part of this process, I requested background information from Alaska and Virgin America, including current seniority lists. In addition, on April 4, 2017, I met in Seattle with employee representatives in various workgroups from both pre-merger Carriers. During these sessions, employees described how seniority was established and used at their respective carriers. We also discussed differences between the two systems, such as the fact that Lead employees maintain separate Classification Seniority under the terms of the Alaska COPS CBA, whereas at Virgin America there is no separate form of Lead Seniority.

In addition to meeting with employee representatives, I also invited affected employees to submit any comments or information pertaining to seniority integration directly to me by May 5, 2017. A few comments were received by the applicable deadline, which were reviewed and taken into consideration when preparing this Report. However, most of these comments related to individual seniority concerns, not issues of broader significance to the work groups involved in this seniority integration.

Pursuant to the parties' process agreement, at the conclusion of my fact-finding process, I am to issue this Report and Recommendations, as well as proposed integrated lists, to be promptly published to the membership by the IAM. As will be explained in greater detail below, my recommendations implement the IAM's policy of seniority integration according to date of entry into classification. Following the publication of this Report and the proposed lists, affected employees will have 45 days to file in writing any protest they may have regarding their placement on the list. I will consider all timely filed protests and issue a final and binding determination with respect to each. After deciding all protests, I will issue final integrated seniority lists, incorporating any necessary adjustments or corrections in light of my protest determinations.

DISCUSSION AND RECOMMENDATIONS

1. General Principles of Seniority Integration

There are several well-settled principles of seniority integration which provide guidance in achieving a fair and equitable seniority integration. First, it must be acknowledged that seniority integration in the airline industry is a "zero-sum" endeavor, with one employee's seniority gain, being another employee's loss. *See Rakestraw v.*

United Airlines, Inc., 981 F.2d 1524, 1529 (7th Cir. 1992) (adjusting seniority is “zero sum game” since the “only outcome is to prefer one group of employees over another”); *ALPA v. Dep’t of Transp.*, 880 F.2d 491, 496-97 (D.C. Cir. 1989) (“reexamining a collectively bargained seniority list is unavoidably a zero-sum game for the class of employees affected – moving a complaining employee higher on the list perforce lowers the relative placement of those leap-frogged by the complainant”). “Whatever the method used . . . some employees will be disadvantaged and some will gain.” *National Airlines Acquisition, Arb. Board*, 97 C.A.B. 570, 572 (1982). Accordingly, “fair and equitable” seniority integration is generally viewed as attempting to avoid a “windfall” to any particular group. *See Pilots of Northwest Airlines and Pilots of Delta Air Lines*, (Richard I. Bloch, Chair, 2008) (finding that where two airlines were comparable, it would be unfair to implement a system which would provide a windfall to one group); *Transp. Workers Union of Am., Local 545 and 542*, at *4 (Richard I. Bloch, 2007) (rejecting seniority integration method that would provide a windfall to the younger workforce of one pre-merger carrier).

Another key consideration in integrating seniority is the relative seniority order within each pre-merger group. To the extent possible, the integration of seniority lists should avoid re-shuffling the order or changing the relative positions of individuals within their pre-merger groups. For similar reasons, it is generally viewed as inappropriate to alter the product of past seniority practices because this too may disturb the relative order of pre-merger lists. Additionally, it is often impractical, if not impossible, to re-write years of history based on records that may not be accurate or may not exist for all employees. *See Arbitration among Delta and Comm. of Former Western Flight Attendants and*

Original Delta Flight Attendants, (Thomas T. Roberts, 1990) (rejecting proposal that training date should be used instead of date of hire because it involved too much “guesswork and estimates” which “render[ed] too many of the dates unreliable to serve as a valid benchmark of seniority integration”).

Even where accurate records do exist, seniority integration to the greatest extent possible should honor the past choices made by employees in reliance on seniority practices, agreements, or company policies in effect at that time. Past decisions that impacted seniority -- for example, decisions about whether to transfer into or out of a classification, work in management, or take leave -- were made based on the seniority practices or rules that existed at the time. Therefore, to retroactively change those rules would be unfair to employees who made choices based on the seniority rules in place at the time. *See Integration of Pan Am. and Nat'l Flight Attendant Seniority Lists*, Civil Aeronautics Board Order 79-12-164 (Richard A. Kasher, Jan. 30, 1981) (refusing to alter seniority lost when employees of one pre-merger group went to work for management because they did “so knowingly and with the understanding that [they] would be forfeiting certain accrued seniority benefits which the CBA provided,” but finding that similarly situated employees in the other pre-merger group would retain seniority for time spent in management as provided for under that group’s CBA because those employees “had expectations that their seniority was preserved”).

Significantly, in integrating seniority lists the focus must be on the fairest and most equitable resolution for the group overall, not on redressing perceived past inequities for each individual employee. *Seniority Integration Arbitration between the Pilots of*

Northwest Airlines, Inc., and the Pilots of Delta Air Lines, Inc., (Bloch, 2008) (“... the focus here is necessarily on groups, not on any individual Inevitably, and unavoidably, there will be perceived disparities and mismatches on individual levels, on both sides, under the merged list”). Finally, the workforces must be integrated in a fair and equitable manner, but nevertheless the “pre-merger expectations borne by both sides to this process will, in virtually all cases, be tempered and shaped by the realities of an enlarged, merged workforce.” *Id.*

2. Basic Principles Applied to Produce Integrated Seniority Lists

At the outset, it is important to understand the scope of this seniority integration process. The basic objective is to integrate Virgin America COPS employees into the collectively-bargained seniority lists which exist under the Alaska-COPS CBA and govern seniority as used for competitive purposes, such as bidding on schedules, vacations, vacancies and transfers, and for furlough/recall purposes. In order to do so, it has been necessary to determine both Company Seniority Dates and Classification Seniority Dates for each Virgin America COPS employee. For the vast majority of Virgin America employees this has been a relatively simple task since most were hired by the Company and continued to work in the same position throughout their careers without any break in service.

It bears emphasis that this seniority process was not intended to and does not determine seniority for non-competitive purposes, such as rates of pay or benefit and vacation accruals. This seniority integration process also does not determine seniority as

it may be used for pass travel, a matter which has traditionally been governed by Company policy.

Lastly, it is important to note that the proposed lists issued with this Report reflect employment dates as currently on record with the Company. In the case of Alaska employees, I have used the most recently published seniority lists, which were issued on or around May 1 in accordance with the requirements of the Alaska COPS CBA. In the case of Virgin America employees, I am using data from the Company updated to June 2017. Therefore, very recent employee status changes may not be reflected on the proposed lists issued with this Report. To the extent that an employee disputes the date assigned to him or her on the current lists, that dispute is a matter to be investigated and handled during the protest phase of this process.

a. Company Seniority Dates

Although used for somewhat different purposes at each pre-merger Carrier, Company Seniority was established in the same manner upon an employee's hire. The only notable difference in how Company Seniority dates were determined at the two airlines is that Virgin America permitted employees who resigned and then returned to the Company to bridge their Company Seniority under certain circumstances. Whereas, at Alaska, an employee who left and returned would not retain any of his or her Company Seniority.

In every seniority integration, however, there will be some differences between the pre-merger seniority systems at each carrier. Generally, as long as existing seniority dates are roughly comparable, those dates will be used for integration purposes. In this case, the

impact of the Virgin America policy of bridging Company Seniority is quite limited, having applied to only 15 employees involved in this integration. Moreover, these employees made decisions about whether to continue their employment based upon the rules in effect at the time, and it would be unfair to now alter the result of those choices by applying different rules. Therefore, Virgin America employees should continue to use their current Company Seniority dates on the integrated seniority lists, as adjusted in a few cases pursuant to Virgin America's policy for bridging time. Alaska employees will continue to use their current Company Seniority dates.

I also note that under the Alaska COPS CBA, Company Seniority is used to determine the order of vacation bidding. In contrast, at Virgin America, employees used their Department Seniority for vacation bidding purposes. Of course, all COPS employees will be covered by the terms of the CBA going forward, meaning that all will use their Company Seniority for vacation bidding. I appreciate that using Company Seniority instead of Department Seniority will change the order in which Virgin America employees have been accustomed to bid vacations among themselves. However, this change is not because of the seniority integration process, but rather the consequence of applying the Alaska COPS CBA to all employees going forward.

b. Classification Seniority Dates

Classification Seniority is clearly the most important form of seniority under the Alaska COPS CBA. Although Company Seniority dictates the order of vacation bidding, Classification Seniority governs bidding on shifts and vacancies, as well as the order for furlough and recall. Alaska COPS employees already have Classification Seniority dates

and they will continue to use those dates unchanged. Therefore, my primary task when integrating Classification Seniority has been to determine what dates Virgin America COPS employees should use. As I explain below, I have determined that these employees should use their current Department Seniority dates as their Classification Seniority dates on the integrated seniority lists.

My investigation showed that the Department Seniority dates used by Virgin America COPS employees are comparable to the Classification Seniority dates used by Alaska employees. For the most part, the Department Seniority date reflects the amount of time a Virgin America employee spent working in a certain position, such as Guest Services Teammate or Crew Scheduler. Although comparable, there are some differences between Classification Seniority and Department Seniority. One difference is that a Virgin America employee who left his or her department would only retain, but not continue to accrue, seniority for a period of 15 months, after which the prior Department Seniority would be lost. In contrast, an Alaska employee who moves between different COPS classifications continues to retain and accrue seniority in a prior classification indefinitely. Despite this difference, I do not believe that it would be appropriate as part of this process to restore seniority previously lost by applying the terms of the COPS CBA retroactively to Virgin America employees.⁵

⁵ I also note that the Transition Agreement between the IAM and Alaska which governs this process also specifies: “Seniority time that has previously been lost at either carrier shall not be reestablished by operation of this agreement.”

Another difference is that Virgin America employees could move into a management position within the same department and not experience a loss of Department Seniority. In contrast, at Alaska, an employee who moved from a position covered under the COPS CBA into a management position would only retain and accrue seniority for a period of 90 days. After that point, COPS seniority would no longer accrue, but would be retained for one year and could be used in a lay-off situation to bid a vacant COPS position. Again, although I recognize that the two seniority systems operated somewhat differently in the past, it would not be appropriate to make adjustments in an attempt to negate those differences now. Virgin America employees made the decision to accept certain positions in the past with the understanding that it would not negatively impact their Department Seniority. It would be unfair to now alter the impact of their past decision-making.

As part of the fact-finding process, I reviewed the Department Seniority lists which were maintained at each station where Virgin America COPS employees worked. During my review, in a few instances, it was discovered that the Department Seniority dates on the station lists were different than the dates reflected in the central records maintained by the Virgin America's human resources department. In general, the differences in the dates were small, only off by a day or two. In a few instances, the Department Seniority lists did not reflect adjustments to seniority for time spent working outside of the department. Virgin America management has advised that the Department lists are in error in these instances. I recognize that some employees may be used to seeing their Department Seniority as reflected on the station lists and may have expected to see the same date on the integrated seniority lists. I believe, however, that I must use the most accurate

information available to me from the central records maintained by Virgin America's human resources department in establishing seniority dates. It would be inappropriate for me to use dates which were admittedly the result of error.

In some cases, I have assigned Classification Seniority dates to Virgin America employees in more than one classification. Pursuant to Virgin America's policy, an employee transferring between departments would retain their prior Department Seniority for a period of up to 15 months. Therefore, employees who transferred within the past 15 months will appear on the seniority lists for both their current and prior classification with dates corresponding to their entry into each classification. However, Virgin America employees who transferred from one department to another more than 15 months ago were considered to have lost all seniority in their prior department under Virgin America's policies. Again, it would not be appropriate for me to try to restore that lost seniority as part of this process.

As noted above, under Virgin America's seniority system, an employee could move into a management position within his or her department without a loss in Department Seniority. The seniority rules in this regard will be different moving forward since under the Alaska COPS CBA an employee who moves into management retains seniority for a year at most, and stops accruing seniority after 90 days. In order to transition Virgin America employees to the CBA seniority system, however, I find it appropriate to include those Virgin America employees who have left CBA-covered positions within the last year on the initial integrated seniority lists. Going forward, these employees will remain on or

be removed from the integrated seniority lists subject to the same CBA provisions applicable to all COPS employees.

c. Lead Seniority

One of the key differences between the seniority systems at each pre-merger Carrier is seniority for employees working in Lead positions. Under the Alaska COPS CBA, an employee who accepts a permanent Lead position establishes a separate Classification Date when he or she first performs service as a Lead. If an employee subsequently returns to the basic classification, he or she retains the Lead Seniority that has been established. In contrast, at Virgin America, employees working as Leads continued to use their Department Seniority date for bidding purposes and did not establish separate seniority as Leads. Thus, I must decide what Lead Seniority will be for Virgin America employees who are currently working as Leads or with prior Lead service.

During the fact-finding process, I determined that Virgin America retained records reflecting when employees were promoted into Lead positions. As a result, it is possible to assign Lead Seniority dates to Virgin America employees using this information. In this case, I believe that this is the fairest approach to the issue of Lead Seniority since it places all employees on an equal footing in terms of defining their Lead Seniority.

I do recognize that in a few cases the order of Virgin America employees according to their new Lead Seniority dates may differ from their prior order according to their Department Seniority dates. Although the seniority integration process generally seeks to preserve employees' pre-merger seniority order to the extent possible, there are other considerations which must be balanced against this objective in every integration process.

Here, it would not be appropriate to integrate Virgin America employees into the Lead Seniority lists using their Department Seniority dates. In nearly all cases, Virgin America employees worked for the Carrier for a significant amount of time before assuming a Lead position. It would be unfair to count this service as part of these employees' Lead Seniority when Alaska COPS employees are not credited with their service in the basic classification when establishing their Lead Seniority. I also do not believe that it would be appropriate in this case to use a ranking system to integrate Lead Seniority. First, the Virgin America work-force is significantly junior in terms of service time to the Alaska group since Virgin America only began operations in 2007. Second, I do not believe it would be appropriate to significantly alter the current seniority system for all Alaska Leads in order to integrate a relatively small number of Virgin America Leads.

Accordingly, I find that the best solution is to assign dates to Virgin America employees using Company records reflecting when each received promotion to a Lead position. These new Lead Seniority dates are reflected on the proposed integrated seniority lists to be published in conjunction with this Report. Because Leads at Alaska already have their Lead Seniority dates, they will continue to use these same dates on the integrated lists.

d. Breaking Ties in Company and Classification Seniority Dates

The last major issue for my determination in this process involves breaking ties between employees who share the same seniority dates. The tie-breaking issue is not an insignificant one since it was common to hire employees in groups at both Carriers. In fact, approximately seventy percent of the employees involved in this integration process share at least one seniority date with one or more other employees.

Different tie-breaking methods were used at each pre-merger Carrier. Under the Alaska COPS CBA, when employees share the same Classification Seniority date, they are first ordered by Company Seniority and, if Company Seniority is also the same, then by date of birth. Under Virgin America's policy, employees with the same Department Seniority are first ordered by their Company Seniority and, if Company Seniority is the same, employees are then ordered by their Virgin America employee numbers with the lowest number holding greater seniority. Virgin America employee numbers were assigned essentially at random based on the order in which new employee paperwork was processed.

Under the present circumstances, I believe that the tie-breaking method set forth in the COPS CBA should be applied to all ties on the integrated lists. I recognize that applying the CBA rule will alter the existing seniority order for Virgin America employees in some instances, however, I believe that it would be impracticable to attempt to retain Virgin America's current tie-break order. First and foremost, new Alaska employee numbers have been issued to Virgin America employees, and going forward their Virgin America numbers will no longer be used. Therefore, maintaining the current tie-breaking order for Virgin America employees would require maintaining records of obsolete employee numbers. Alternatively, a ranking method could be used that would maintain the current order. However, as with Lead Seniority, I do not believe it would be appropriate to significantly alter the current seniority system for Alaska COPS employees in order to integrate a far smaller number of Virgin America employees.

Accordingly, the integrated seniority lists published with this report use the tie-breaking method set forth in the Alaska COPS CBA. It should be noted, however, the published lists do not include birth dates due to concern for employees' privacy.

CONCLUSION

I believe that the integration of seniority in accordance with the recommendations set forth in this Report ensures fair and equitable treatment for all COPS employees covered by this process. Pursuant to the IAM's internal policy, employees have been integrated according to their dates of entry into classification, which affords equal weight to service at both pre-merger Carriers. The vast majority of employees will see little, if any, change in their seniority status as a result of merging seniority lists.

In conjunction with this Report, I am also issuing proposed integrated seniority lists which reflect the recommendations contained herein. Impacted employees will have 45 days to file in writing any protest they may have regarding their placement on the list. Therefore, all protests must be received by August 26, 2017 and may be sent by mail or email to the following address:

Attn: Neutral Joshua M. Javits
c/o Guerrieri, Clayman, Bartos, Parcelli & Roma, P.C.
1900 M Street, N.W., Suite 700
Washington, DC 20036
IAMseniority@geclaw.com

Each protestor must include the following information: full name, employee number, job title, station, and a clear statement of the basis for the protest. The failure to include this information may prevent me from conducting a complete investigation of the protest. Employees should also include any documents which they believe are relevant to their

seniority protests. I will consider all timely and complete protests and issue a final and binding determination with respect to each. At the conclusion of the protest process, I will issue final integrated seniority lists, incorporating any necessary changes resulting from my protest determinations.