

# The Labor Relations Advisor

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## Northwest And AFA Reach Tentative Pact

Northwest has reached a tentative agreement with its flight attendants, represented by the Association of Flight Attendants (AFA-CWA), on the same day the airline had authority to impose new contract terms, two weeks after the cabin crew voted in a new union, and six weeks after the flight attendants rejected an earlier proposed settlement.

The proposed deal achieved the targeted savings of \$195 million per year -- the same value of concessions that attendants voted down in early June. Although the revised proposals maintain major components of the earlier package, including a 21 percent pay cut and increased healthcare premiums, the new tentative has reportedly eliminated the most offensive provisions of the failed tentative. AFA leaders recommend ratification of the proposed contract in the union vote scheduled for conclusion July 31st.

The deal follows on the heels of a new flight attendant union at the airline. Northwest attendants voted for representation by AFA-CWA on July 6th, ousting the Professional Flight Attendant Association

*“ . . . the new tentative has reportedly eliminated the most offensive provisions of the failed tentative.”*

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## Court Authorizes Mesaba To Reject Labor Contracts

A federal bankruptcy court has ruled that Mesaba Airlines can reject labor pacts covering 1,300 pilots, flight attendants, and mechanics in order to emerge from bankruptcy. On July 14th Judge Gregory F. Kishel approved the company's motion to void its contracts with the Air Line Pilots Association (ALPA), AFA, and the Aircraft Fraternal Association (AMFA) [In re *Mesaba Aviation Inc.*, Bankru. D. Minn., No. 05-39248, order 7/14/06]. The order permits the company to implement its most recent restructuring proposals at an appropriate time, contingent upon giving the unions 10 business days notice. ALPA plans to appeal the ruling. All three unions have threatened to strike if the company imposes unilateral cuts.

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## UPS, Pilots Reach Tentative Accord

UPS has announced a tentative agreement with its 2,700 pilots, represented by the Independent Pilots Association (IPA). Pending approval by union members, the agreement will become amendable January 1, 2012. The IPA expects to complete the ratification ballot count by mid-September. Below are highlights of the tentative pact.

- Pay. Pay rate increases vary based on seniority level. On the date of signing, pay increases will range from 16.6 percent to 25.8 percent, and crew members will be paid signing bonuses up to \$60,000. On January 1st 2007, pilots will receive pay increases of up to 6.5 percent. Each January 1st from 2008 through 2011, hourly rates will increase from

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## Northwest and AFA

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(PFAA). The 9,115 attendants voted for AFA by a 77 percent margin, far surpassing the minimum 50 percent plus one threshold mandated by the Railway Labor Act to maintain union representation. AFA is part of the Communications Workers of America, affiliated with the AFL-CIO. PFAA had emerged from the Northwest cabin crew in 2003 to oust the International Brotherhood of Teamsters, the previous union representing attendants at the airline.

Following the ballot count, AFA replaced PFAA at the bargaining table and commenced marathon negotiations with Northwest in an effort to

*“ . . . the bankruptcy court ruled that the airline could reject the flight attendants contract, but ordered bargaining to continue for two more weeks in order to reach a tentative pact or to show substantial progress towards achieving a settlement.”*

reach a concessionary agreement by the court-imposed deadline of July 17th. The PFAA-represented flight attendants had rejected a tentative restructuring contract by an 80 percent margin on June 6th. On June 29th, the bankruptcy court ruled that the airline could reject the flight attendants contract, but ordered bargaining to continue for two more weeks in order to reach a tentative pact or to show substantial progress towards achieving a settlement. Meanwhile, implementation of ratified agreements with the other union-represented work groups have been delayed until the company either reaches a ratified contract with the flight attendants, or imposes a concessionary agreement. ■

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## Court OKs US Airways Stock Decision In 401(K) Plan

A federal court has ruled that US Airways acted prudently by retaining its stock as an investment option in the employees' 401(k) plan during the company's financial decline that culminated in bankruptcy. (*DeFelice v. US Airways Inc.*, E.D. Va., No 1:04cv889, 6/26/06). The court found that although the company's stock presented a high-risk investment, the airline did not breach its fiduciary duties because it provided participants with a variety of investment options including low-risk funds, accurate information about the risk/return characteristics of investment choices, and unlimited ability to trade among the range of investment options.

In 1988, the airline designed its 401(k) plan, naming US Airways as the Fiduciary and Fidelity Management as the plan's directed trustee. Employees were offered 13 investment options, including a stock fund comprised primarily of the stock of US Airways and its parent, US Air Group, Inc.

US Airways' financial slide that began in 2000 spiraled down after the terrorist attacks of September 11, 2001. The airline's share price dropped by almost 65 percent between September 10 and September 27, 2001, according to court records. In late June 2002, the company appointed Fiduciary Counselors, Inc. as an independent fiduciary of the stock fund. Unable to reduce its costs by the deadline, the company filed for Chapter 11 bankruptcy in August 2002.

Vince D. DiFelice, a US Airways employee and a participant in the 401(k) plan, filed suit. He brought charges against the airline, Fidelity Management, and Fiduciary Counselors, alleging a breach of fiduciary duties by continuing to offer US Airways stock as an investment option. DiFelice argued that ERISA standards would prohibit plan participants from investing in the airline's stock fund because of the high probability of the company's bankruptcy. Although the court dismissed charges against Fidelity Management and Fiduciary Counselors, the remaining claims against US Airways were certified as a class action.

Ruling for US Airways, United States District Court Judge T.S. Ellis found that plan participants held the responsibility for selecting among available investment options offered by the plan. "...Participants had virtually complete freedom to direct...their 401(k) contributions...among the available investment options, and to transfer the Plan account assets among the available investment options on a daily basis," the Judge observed. Furthermore, US Airways warned employees of the risks of the company stock fund due to the dismal financial outlook, and repeatedly advised participants to diversify their accounts in order to minimize risk for a given return, according to court records.

The judge noted that the Company relied upon the "portfolio management theory," a standard endorsed by both the investment community and by ERISA. This practice assesses the prudence of an investment by its contribution to a diversified portfolio containing a mix of high- and low-risk investments. The fact that US Airways offered the high-risk stock fund as an investment option does not mean that the airline breached fiduciary duties, the court concluded. "ERISA requires that the prudence of selecting a particular investment be viewed in light of its contribution to the risk and return of the entire portfolio, and not in light of its individual risk," the Judge explained. ■

## IAM Approves Deals At Alaska Airlines

Nearly 3,700 employees represented by the International Association Machinists (IAM) have approved deals with Alaska Airlines that provide modest pay increases and reduce the employer's benefit costs. Seventy-eight percent of the 600 ramp and stores workers accepted their agreement, and 70 percent of the 3,100 clerical, office, and passenger service group (COPS) voted in favor of their new contract. The agreement will be retroactive to 2004 with the pacts becoming amendable May 31, 2010. Highlights of the agreement are as follows:

- Pay.** Both contracts provide 2 percent pay increases effective June 1st of 2006, 2007, and 2008. On June 1st 2009, all employees will receive a 1 percent increase, while COPS workers at the top step will receive an additional 1.5 percent pay raise. All current IAM-represented workers also will be paid a \$500 signing bonus.
- Retirement.** The new pacts permit current employees to select the

components of their retirement plan(s), with an incentive to shift to an enhanced defined contribution plan. Workers may choose between continued coverage under the existing defined benefit (DB) and defined contribution (DC) plans, or freezing the DB plan and enhancing the DC plan. The new DC plan would provide a 4 percent company contribution plus a 50 percent employer match of the first 4 percent employee contribution, up to a maximum 6 percent airline contribution. This compares to a maximum company contribution of 3 percent under the existing DC plan. New hire employees will be eligible for only the enhanced DC plan.

- Insurance.** Employees' share of health insurance premiums will increase to 15 percent of total cost of coverage in 2007 and 18 percent in 2009, subject to a maximum dollar increase of 15 percent. By comparison, employee premiums represented only 4 to 6 percent of total costs under the old contract. Design features of the six existing health

insurance plans will be incorporated into the contracts, and cannot be changed except by mutual agreement of the parties. A new "high deductible," low-cost PPO will be offered to employees, in addition the current plans. Employees who retire at age 62 or later may use 50 percent of the value of unused sick leave at retirement towards the monthly cost of continued health insurance coverage.

- Other provisions.** An early-out plan for employees at the top four pay steps will provide enhanced pay and benefits following separation. Tighter subcontracting protections will expire on the amendable date. Employees also agreed to test a "management assist" program that permits management employees to assist bargaining unit employees in limited situations to maintain efficiency and to improve operational performance. The program is subject to union cancellation after 18 months. ■

### Court Authorizes *(continued from page 1)*

This decision reverses a May 18th ruling in which Judge Kishel denied Mesaba's original motion to void its agreements under §113(c) of the United States Bankruptcy Code, and to slash labor costs by 19.4 percent over 6 years. At that time the court found the airline had failed to provide sufficient supporting financial information requested by the unions. On June 12th Mesaba renewed its motion, and presented the unions with required data and proposed contract terms.

Mesaba filed for Chapter 11 bankruptcy protection in October 2005, one month after the bankruptcy filing of its partner, Northwest Airlines. Prior to entering bankruptcy, the mainline carrier had reduced Mesaba's fleet and withheld \$30 million in payments to the regional carrier. ■

## NEWS BRIEFS...

**NEGOTIATIONS/SETTLEMENTS...** Southwest pilots, represented by SWAPA, voted by an 81 percent margin to reject the company's offer to extend their contract by one year. The current contract, amendable August 31st, was originally negotiated in 1994 and then extended in 2002.... President Bush has established an Emergency Board to investigate a collective bargaining dispute between SEPTA and its engineers represented by the Brotherhood of Locomotive Engineers and Trainmen... Crewmembers at **Gemini Air Cargo**, represented by the ALPA, declined to ratify the amendments to the labor contract reached last month. Of the 189 crewmembers eligible to vote, 86 percent participated with 66 percent voting against the amendments.... **ExpressJet** has reached a tentative agreement with its IAM-represented flight attendants....**REPRESENTATION...**The NMB has authorized an election for nonunion ground school instructors at **American Eagle**. TWU is seeking to represent the instructors....The IBT won an election for

pilots at **Cape Air** (Hyannis Air Service) on June 20th. Of 91 eligible voters, 54 voted for the Teamsters....The NMB has dismissed the IAM's application to represent **JetBlue** fleet service employees on the grounds of an insufficient showing of interest....**MISCELLANEOUS...** U.S. airlines are reporting that a significant proportion of **furloughed pilots** are refusing recall. At several major airlines, only 1 pilot is returning to work out of every 3 to 5 furloughed pilots who are asked back....Two Presidential nominees to the NMB have won approval by a Senate committee, and await consideration by the full Senate. Harry R. Hoglander is nominated for a second term, and Elizabeth Dougherty would succeed outgoing member Read Van de Water. President Bush also plans to appoint Peter W. Tredick to serve as the third Board member for an additional 3-year term expiring in 2010, although the Senate has not yet confirmed the labor attorney's nomination to serve the current term. ■

### **UPS** *(continued from page 1)*

approximately 2.5 percent to about 9 percent. All employees will receive a 4 percent pay rate increase January 1st 2012, and the captain's scale will be elongated to 15 years from the current 12 years.

- Scheduling. New provisions limit international crossings, defined as a duty period crossing more than 4.5 time zones. Other changes include reducing the maximum scheduled credit hours per bid period, raising minimum average days off, increasing minimum rest, and modifying the reserve system.
- Health and Welfare. The parties agreed to increase pilot premium contributions and to eliminate the 30-day waiting period for health insurance eligibility. Crewmembers who have lost medical certificates will be eligible to continue health coverage at the same rates as active pilots for 2 years, with an extension under certain conditions. The new pact revised retiree health benefits by doubling retired pilots' contributions to \$100 per month, and by raising the lifetime maximum benefit from \$500,000 to \$1 million.
- Retirement. The tentative deal raises the company's contribution to the money purchase pension plan by an additional 1 percent to a total of 12 percent of pilot compensation. The parties agreed to continue the defined benefit plan with a revised benefit formula, and to eliminate the Social Security Offset.
- Other. The new contract provides unlimited sick leave accrual, eliminating the current 98-hour maximum bank. Sick accrual in excess of 108 hours will be paid out at the pilot's current hourly rate. The 108-hour trigger will increase each contract year up to 148 hours. Vacation accrual increased to a maximum of 35 days after 20 years of service. The agreement also enhanced vacation buy-back and occupational injury leave, and increased per diem for Europe flights. ■