

In the Matter of the Seniority Integration Arbitration

Between

THE PILOTS OF NORTHWEST AIRLINES, INC.

and

THE PILOTS OF DELTA AIR LINES, INC.

Subject: Integrated Seniority List

**ARBITRATION BOARD**

Richard I. Bloch, Chair  
Dana Edward Eischen  
Fredric R. Horowitz

**Appearances**

For the Delta Pilots Merger Representatives:

BREDHOFF & KAISER, PLLC

By: Jeffrey R. Freund, Esq.  
Roger Pollak, Esq.

For the Northwest Pilots Merger Representatives:

KATZ & RANZMAN, PLLC

By: Daniel M. Katz, Esq.  
Jason Whiteman, Esq.

**Also Present**

**For the Delta Pilots**

D. Lee Moak, Master Exec. Cncl. Chair  
John O'Malley, Negotiating Comm. Chair  
Randy Worrall, Merger Committee Chair  
Norm Abare, Merger Rep.  
Richard H. Harwood, Merger Rep.  
John J. Morgado, Merger Rep.

**For the Northwest Pilots**

David Stevens, Master Exec. Cncl. Chair  
John Haas, Negotiating Comm. Chair  
Steve Mayer, Merger Committee Chair  
Greg Averill, Merger Rep.  
Lane Kranz, Merger Rep.  
Eric Newman, Merger Rep.

## **PRELIMINARY STATEMENT**

These proceedings arise out of the April 14, 2008 announcement that Delta Airlines Inc. (“Delta” or “DAL”) and Northwest Airlines Inc. (“Northwest” or “NWA”) agreed to merge and form the world’s largest airline. At all times pertinent to this case, pilots employed by each constituent carrier and by the merged carrier have been and are represented by the Air Line Pilots Association, International (“ALPA” or “Association”), under terms and conditions of employment set forth in various collective bargaining agreements between ALPA and the respective carriers. This arbitration was conducted in accordance with the currently controlling ALPA Merger Policy and a July 2008 “Process Agreement” between the DAL Master Executive Committee (“DAL MEC”) and the NWA Master Executive Committee (“NWA MEC”), accepted and approved by ALPA, which reads, in pertinent part, as follows:

### **Process Agreement**

This Process Agreement is entered into by the Northwest Master Executive Council of the Air Line Pilots Association, International (the “Northwest MEC”) and the Delta Master Executive Council of the Air Line Pilots Association, International (the “Delta MEC”), with the agreement and approval of the Air Line Pilots Association, International (the “Association”), to establish a process for integration of the pilot seniority lists at Northwest Airlines, Inc. (“Northwest”) and Delta Air Lines, Inc. (“Delta”) in connection with the announced merger of Delta and Northwest (the “Merger”).

The parties hereby agree to conclude the integration of the pre-merger seniority lists into a single integrated seniority list, prior to the effective date of the Merger, under the following process:

#### **Negotiation**

1. Beginning no later than July 8, 2008, representatives designated by each of the Northwest and Delta MECs (the “Representatives”) will meet and continue to work in good faith to reach agreement on an

integrated seniority list for the post-merger airline. Any full agreement on an integrated seniority list reached by the Representatives under this Process Agreement (any such agreement, a “Negotiated Agreement”) will be final and binding on the Delta MEC, the Northwest MEC and the Association.

2. If the Representatives are unable to reach agreement by August 8, 2008, they will make every reasonable effort to create a mutually-acceptable written statement of the resolved issues and the open issues in the seniority list negotiations. The Representatives will make every reasonable effort to finalize the list of resolved and open issues by August 12, 2008.

### Arbitration

3. If the Representatives are unable to agree on an integrated seniority list by August 12, 2008, the parties will commence a final and binding arbitration process before the neutral arbitration panel selected as described in Schedule A to this Process Agreement (the “Arbitrators”).
4. The arbitration proceeding will be scheduled to ensure the availability of the Arbitrators, will conclude prior to November 15, 2008 and will consist of no more than twelve (12) hearing days. The parties will meet prior to August 30, 2008 to establish procedural ground rules for the arbitration process, keeping in mind the expedited nature of the proceeding and the need for a final seniority list prior to the effective date of the Merger. The Arbitrators will have the final authority to establish such procedural and evidentiary rules as the Arbitrators deem appropriate, keeping in mind the expedited nature of the proceeding and the need for a final integrated seniority list prior to the effective date of the Merger. The Arbitrators may also act as mediators from time to time during this process if the Representatives so request or if the Arbitrators deem mediation to be advisable during this process.
5. The issue for resolution before the Arbitrators will be the fair and equitable integration of the pre-merger Delta and Northwest seniority lists consistent with ALPA Merger and Fragmentation Policy (“ALPA Merger Policy”). In making this determination, the Arbitrators will be bound by the pre-arbitration statement of resolved issues presented by the Representatives and will determine the remaining open issues with respect to an integrated seniority list.

6. The Arbitrators will issue a written, signed decision (the “Award”) by no later than November 20, 2008. If necessary, the Arbitrators may issue a written opinion in support of the Award at a later date, but no later than December 20, 2008. These dates may not be waived, amended or extended by the Arbitrators or the parties for any reason unless the effective date of Merger is extended beyond November 20, 2008.<sup>1</sup>
7. The Award will be final and binding on the Delta MEC, the Northwest MEC and the Association. The Arbitrators will retain jurisdiction for the limited purpose of resolving disputes between representatives of the pre-merger Delta and Northwest pilot groups over the interpretation or application of the Award, under the dispute resolution process to be established in accordance with Paragraph 9 below.

#### Implementation

8. The Negotiated Agreement or Award, as the case may be, will be presented to Delta as the final integrated seniority list under **Section I D. 8. b.** of the Delta PWA in effect following the Merger and will be defended and enforced by the Association as an award under ALPA Merger Policy.
9. Prior to the effective date of the Merger, representatives of the pre-merger Delta MEC and pre-merger Northwest MEC will adopt a simple process for resolving questions concerning the interpretation or application of the integrated seniority list created by either the Negotiated Agreement or the Award. Any unresolved issues concerning the terms of this internal dispute resolution process will be submitted to final and binding arbitration before the Arbitrators.

#### General

10. The parties acknowledge that this Process Agreement constitutes an agreement pursuant to ALPA Merger Policy between the Delta MEC and the Northwest MEC for an expedited decision process to replace the decision process contained in ALPA Merger Policy. The terms of this Process Agreement (and, if necessary, **Section I D. 8.**

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1. By letter Agreement of November 11, 2008, the parties and the arbitrators agreed the Award and supporting written opinion would be issued together, no later than December 8, 2008.

**b.** of the Delta PWA in effect following the Merger) shall be the exclusive process governing the integration of the Northwest and Delta pilot seniority lists within the Association in connection with the Merger, and each party hereby waives any right to invoke any provision of ALPA Merger Policy, including any request for a Policy Initiation Date under ALPA Merger Policy, with respect to the process for determining the integration of the Northwest and Delta pilot seniority lists in connection with the Merger.

11. Any dispute over the interpretation or application of this Process Agreement will be determined in final and binding arbitration before a [sic] Ed Krinsky or Ira F. Jaffe, whoever is first available. The arbitration proceeding will take place on a single day within five business days of the assignment of an arbitrator, and the arbitrator will issue an oral decision at the conclusion of the arbitration proceeding. The timetable described in this Process Agreement will be not be altered or delayed as a result of any proceeding under this paragraph 11.

Evidentiary hearings were held October 2-5, in Los Angeles, October 20-24, in Washington, D.C., and November 15- 17, 2008, in Los Angeles, at which the respective MECs were represented by Counsel and offered full opportunity to submit oral and documentary evidence, including direct testimony and expert opinions, all subject to cross-examination and rebuttal. The evidentiary record was closed following receipt of the stenographic transcript and written post-hearing summations, dated November 21, 2008. Thereafter, the Arbitration Board convened in Executive Session and, after careful consideration of the record and extensive consultation, rendered this Opinion and Award.

Delta and Northwest are comparable airlines. Each was founded in the mid-1920's. Both are full-service domestic carriers with substantial international operations and each has a large fleet that includes narrow- and wide-body aircraft. Before deregulation, these two carriers had the best credit ratings, balance sheets and

profitability in the industry. Although now relatively strong again, both filed for bankruptcy on September 14, 2005; from which Northwest emerged on May 31, 2007, and Delta on April 30, 2007. Last year both carriers booked pretax profits, excluding the impact of reorganization items: Northwest earned \$764 million in 2007; Delta, \$625 million.

The merging carriers also exhibit some significant differences, many of which will work to their advantage as a combined carrier, through marketing and operational gap-filling. In that regard, Northwest maintains Midwest fortress hubs at Detroit and Minneapolis, with a smaller hub at Memphis. Delta's domestic capacity is concentrated in Atlanta, with smaller hubs in Salt Lake City and Cincinnati. Internationally, Northwest is a major presence in Asia (with a hub at Tokyo's Narita airport and valuable "Fifth-Freedom" rights that allow the carrier to operate service from any gateway in Japan to points beyond Japan and to carry Japanese originating passengers to points beyond), plus a long-standing joint venture with KLM (with their cooperative European operation centered at Amsterdam). For its part, Delta has a significant presence in Latin America and in Europe, as well as a marketing reach extending to the Middle East and Africa (through its alliance with Air France and flights of its own).

During the months after emergence from bankruptcy, more or less simultaneously in Spring, 2007, each of Delta's and Northwest's Board of Directors, from time to time, separately reviewed and discussed potential strategic alternatives with senior management of their respective companies, considering ways to enhance their respective performance and prospects in light of airline industry and economic conditions. For each company, these reviews included periodic internal discussions of

projected financial performance as well as the potential benefits and risks of hypothetical transactions that could add stockholder value, better serve customers and employees and further strategic objectives. Among other things, they considered the effects of competition from foreign airlines, capital needs, labor issues, regulatory matters, airline alliance matters, the pros and cons of going forward on a stand-alone basis in the rapidly changing and increasingly competitive environment in the airline industry, and whether a merger transaction would help each achieve its strategic goals, increase stockholder value, build a world class respected brand, broaden route networks and improve financial sustainability. Eventually, all of these considerations crystallized in the merger which was announced publicly on April 14, 2008.<sup>2</sup>

Beginning in late 2007, the carriers each also engaged in discussions with representatives of the Delta and Northwest pilot groups regarding potential changes in the system collective bargaining agreements to be effected in connection with a merger. The topics discussed included not only terms and conditions of employment but also pilot representation on the combined company board and a proposed pilot equity stake in the combined company. Throughout, the carriers conditioned any merger on a smooth and expeditious transition to an integrated pilot seniority list (“ISSL”) and a joint collective bargaining agreement (“JCBA”). Despite strenuous efforts, however, the

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<sup>2</sup> The CEO’s of both airlines heralded the potential of the combined carriers in Congressional testimony:

Delta CEO Richard Anderson touted the carriers’ comparability and mutual strengths in his testimony before the Subcommittee on Antitrust, Competition Policy and Consumer Rights of the Senate Judiciary Committee, April 24, 2008, at 9: “And what this merger does for two already strong carriers is give us the power to compete and win versus foreign flat carriers ....” Northwest CEO Douglas Steenland testified before the Subcommittee on Antitrust Task Force and Competition Policy of the House Committee on the Judiciary, April 24, 2008, at 10, that “amongst the U.S. airlines, Northwest and Delta have the best balance sheets, we have the best cash position, we are well-positioned as any other airline out there.” (NW Pre-hearing Statement, p. 2.)

two pilot groups informed Delta and Northwest, in February 2008, they had been unable to reach agreement on an integrated seniority list and were ceasing their negotiations. Periodically throughout March 2008, the Delta and Northwest pilots had further, but ultimately unfruitful, contact through their Executive Councils.

In early April 2008, Delta and ALPA representatives for the Delta pilot group reached a tentative agreement to modify and extend the Delta pilots' existing collective bargaining agreement, in exchange for, among other things, a 3.5% equity stake in the combined company, certain compensation increases and the right to designate one member of the Delta board of directors. Thereafter, following approval of the Delta and NWA boards, the companies executed the Merger Agreement. Delta also executed certain ancillary agreements, including a transaction framework agreement with the Delta MEC and ALPA. After announcement of the transaction in a press release issued jointly by Delta and Northwest on April 14, 2008, Delta entered into a new transaction framework agreement with the Delta MEC, the Northwest MEC and ALPA that, by its terms, superseded the earlier agreement between Delta, the Delta MEC and ALPA.

The new transaction framework agreement addressed, among other things, the terms of the unprecedented pre-merger joint collective bargaining agreement ("JCBA") for the combined pilot group, since ratified by the Delta and NWA pilots, which became effective upon consummation of the merger. Northwest also entered into an ancillary transaction framework agreement consenting to the new JCBA. The new framework agreements also provide that the Delta and Northwest MECs, as well as ALPA, adopt



and be bound by a unique Process Agreement<sup>3</sup> that provides, among other things, for determination of an integrated pilot seniority list by this proceeding, conducted under the auspices of three impartial arbitrators.

## **POSITIONS OF THE PARTIES**

### **Delta MEC Position**

The Delta committee proposes a Status and Category ratio approach to the List integration that positions pilots from the respective carriers on the basis of comparable status and comparable equipment. It notes that Status and Category ratios were employed in implementing Delta's three previous mergers (Delta/Northeast, 1972; Delta/Western, 1987; and Delta/Pan American World Assets Acquisition, 1991). This methodology, it argues, best preserves each group's pre-merger career expectations.

Fleet growth is among the important elements to be observed, contend the representatives on behalf of the DAL pilots. The Delta Committee directs the Board's attention to a series of "equities" that warrant consideration in building the ISSL list :

- A. NWA Pilots will gain large pay increases by virtue of the merger; these immediate and guaranteed pay increases should be weighed appropriately against future attrition imbalances that may benefit one group for a limited period of time in the future.
- B. Because of the large group of excess pilots brought to the merger by the NWA pilot group, the Panel must fashion appropriate furlough protections for the Delta pilot group.
- C. Each pilot group brings certain workforce growth expectations to the merged entity, especially claims that each pilot group makes about regarding wide-body "growth" aircraft that, on a stand-alone basis would have provided valuable top-of-the-list job

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<sup>3</sup> See pp. 2-5, *supra*.

opportunities.

- D. The final resolution of the “Red Book/Green Book” Roberts Award legacy within the NWA pilot group cannot be resolved at the expense of the Delta pilot group.
- E. Given facts and circumstances unique to each of the Delta and Northwest pilot groups, all pilots from each carrier that appear on the July 2008 seniority list should be treated equally, as if they did not have constructive notice of the merger.

The DAL Committee proposes a 7-group Status and Category ratio composed of three Captain segments, three First Officer (“FO”) groups, including DC-9 Captains, and a separate DC-9 FO group. These categories, it contends, are a natural alignment based on pre-merger hourly rates, performance capacities and missions of the aircraft.

- **Category 1** would include wide-body international Captains flying the Delta Boeing-767-300 ER and the NWA A-300, plus 15% of their 757 fleet, representing the aircraft that flies international routes.
- **Category 2** includes Captains on both carrier’s domestic wide-body fleets of 767 and 757 aircraft flying long-range domestic routes.
- **Category 3** would include Captains on both carrier’s domestic narrow-body fleets, flying short-range domestic routes. That group would include the Delta B-737, MD-88’s and -90’s and the NWA A-320’s. It would exclude, however, the NWA DC-9 Captains.

- **Categories 4-7** repeat the first three for FO positions with the DC-9 Captains included and a fourth category for DC-9 FO's.

The Committee also proposes a series of Conditions and Restrictions to accompany the integrated list, including aircraft fences extending to November 2011 and furlough protection to November of 2010. Constructive Notice – the date pilots should be presumed to know their careers will be impacted by the mergers – is also an issue between these parties. The Delta group proposes that all pilots on both carriers' July 1, 2008, Seniority Lists be treated identically for purposes of this proceeding; none should be treated as though they had “constructive notice” of the merger prior to their beginning employment at either NWA or Delta.<sup>4</sup>

#### Northwest MEC Position

The Northwest representatives endorse a Date-of-Hire approach, with attendant conditions and restrictions. Arbitral precedent supports the use of a date-weighted solution in cases where, as here, the two carriers are comparable, it is claimed. The representatives direct the Board to what they refer to as “Super-Premium Wide-Body” international flying, including Boeing 747-200's and -400's, as well as A-330's. Moreover, Northwest has on order 18 B-787's, with another 50 on option.

Northwest is one of only three U.S. carriers with the right to operate unlimited frequencies between any point in the United States and Japan, in addition to “Fifth

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<sup>4</sup> Delta pre-Hearing Statement, p. 32.

Freedom Rights” that allow the carrier to operate service from any gateway in Japan to points beyond Japan, as well as to carry Japanese originating passengers to points beyond. And, Northwest holds more non-stop authority to China than any other U.S. carrier. These routes, it is argued, provide unparalleled job security to Northwest pilots.

The Northwest pilots’ greater average age, it is claimed, will benefit all junior pilots due to attrition-based promotional opportunities. Within the next seven years, 15% more Northwest pilots than Delta pilots will reach age 62 and retire or otherwise leave the workforce. This is a benefit that will extend across the merged pilot list, inasmuch as additional promotional opportunities will become available to all pilots now located lower on the list. “This factor,” say the Northwest representatives, “stands as one of the significant contributions the Northwest Pilots will make to the merged groups advancement prospects.”<sup>5</sup>

The Conditions and Restrictions that would accompany the Seniority List include a “Constructive Notice” date of April 14, 2008; the date after which newly-hired pilots would be junior to all the others on the ISSL, inserted by Date-of-Hire order. Northwest proposes a 10-year fence on awarding positions across pre-merger carrier lines.

As an alternative position, in the event the Board were to consider a Status and Category approach, the NW pilots propose a “Dynamic Seniority List” that would operate as follows: Slots for each pre-merger pilot group would be established in accordance with ratios based on groupings of similar jobs. Active pilots from each group would then populate the slots reserved for their respective group, in seniority order. As vacancies arise throughout the Seniority List, the more junior pilots from the same

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<sup>5</sup> Northwest Representatives’ Pre-hearing Statement, p. 7.

group would all advance to the next more senior slot. This mechanism, it is argued, would adequately preserve the relationships between the two pilot groups by, among other things, maintaining the distribution of seniority over time. As such, “A list that is fair on Day 1 will be just as fair ten year later.” The Northwest representatives propose an alternate list of conditions and restrictions to accompany the Dynamic List approach.

With respect to the Constructive Notice issue, the NWA representatives maintain that there is no good reason to deviate in this case from the standard practice of considering the date of the public merger announcement, April 14, 2008, as controlling.

### **ANALYSIS**<sup>6</sup>

The current ALPA Merger Policy includes the following admonition to merger representatives, which this Board adopts as its guidelines in this proceeding:

...4. The merger representatives shall carefully weigh all the equities inherent in their merger situation. In joint session, the merger representatives should attempt to match equities to various methods of integration until a fair and equitable agreement is reached, keeping in mind the following goals, in no particular order:

- a. Preserve jobs.
- b. Avoid windfalls to either group at the expense of the other.
- c. Maintain or improve pre-merger pay and standard of living.
- d. Maintain or improve pre-merger pilot status.
- e. Minimize detrimental changes to career expectations.

We have carefully reviewed the respective submissions, evidence and arguments submitted over the 12 days of hearings. In the course of constructing the ISSL, we have

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<sup>6</sup> Transcript pages are cited Tr., [page]; Delta opening case exhibits are cited DX [tab] at [page]; Delta cross-examination exhibits are cited DCX [tab] at [page]; Delta rebuttal exhibits are cited DRX [tab] at [page]; Northwest opening case exhibits are cited NX [book] [tab] at [page]; Northwest cross-examination exhibits are cited NCX [tab] at [page]; and Northwest rebuttal exhibits are cited NRX [tab] at [page].

taken seriously the admonition of the ALPA Merger Policy to disrupt as little as possible the valid career expectations of pilots who have staked their professional lives on service to their respective companies. We have also recognized, as one must, that 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.

Notwithstanding months of vigorous negotiations and subsequent good faith participation in mediation efforts, the parties to this dispute are deeply divided, as is apparent from their respective proposals: Each does little more than stack the deck for their own constituencies in ways that are neither fair nor equitable.<sup>7</sup> As will be discussed below, this Board has chosen a different approach, one that adopts a Ratio and Category basis, but with a simplified grouping of aircraft, a “Pull and Plug” adjustment mechanism that addresses Attrition considerations and a limited period of Conditions and Restrictions designed to deal with, among other things, fleet expansion and reduction.

In constructing this list, we have considered the relative size and operational characteristics of these carriers, which, on the basis of the record, are in many respects similar, as indicated above. But there are meaningful differences between these carriers, and their pilot forces, as well, that lie not so much with current posture as with the future prospects and, in terms of the pilot groups, career expectations.

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<sup>7</sup> Addressing the subject of Seniority List Integration, Arbitrator George Nicolau wrote:

“There are four basic lessons to be learned...; that each case turns on its own facts; that the objective is to make the integration fair and equitable; that the proposals advanced by those in contest rarely meet that standard; and that the end result, no matter how crafted, never commands universal acceptance. (*Federal Express and Flying Tiger Pilots*, (1990) at pp. 27-28.)

On the one hand, dealing with the future prospects of anything in the airline industry is nothing short of reading tea leaves or, to cite a far more daunting venture, predicting fuel prices. On the other hand, those sorts of assessments are the stuff of which “career expectations” are made. Therefore, it is appropriate that one examine possibilities and potentials to whatever extent is reasonable, in the course of constructing a merged seniority list that is fair and equitable. A brief comment on that merger standard is in order. By employing concepts of both fairness and equity, the drafters of the ALPA Merger Policy recognized a dual standard that should serve to inform the judgment of those constructing a merged list. An integrated list that responds solely to statistical absolutes (for example), with no broader view of the short- and long-term impact on career expectations, might be considered nominally fair but realistically inequitable. Too, a process that ignores reality and bypasses facts, that pursues, instead, an illusory notion of “something for everyone,” could hardly be fair. In constructing this list, we have inquired as to where the respective groups<sup>8</sup> have been and we have made reasoned judgments as to where they were going. We have attempted, at all times, to recognize reasonable expectations of both parties while, in all instances, rejecting proposals that, however facially logical, resulted in untenable windfalls.

The resulting list neither realizes nor maintains each and every career expectations, nor could it do so. No recitation of career expectations ever includes a merger, and no merger can leave all hopes and plans unaffected. The most that can be said, and it can be said with some assurance in this case, is that the merger of these

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<sup>8</sup> As in all such exercises, the focus here is necessarily on groups, not on any individual pilot. Inevitably, and unavoidably, there will be perceived disparities and mismatches on individual levels, on both sides, under the merged list.

particular companies will result in a uniquely powerful entity, by virtue of the contributions of both carriers, that is capable of better withstanding the substantial challenges of the current environment than if the Companies had chosen to go it alone.

### The Integrated System Seniority List

We have assessed and compared the respective proposals with an eye to pilot bidding power and flying options not only as of the time of the merger; but also in the years and, in some instances, the decades that follow.<sup>9</sup> As will be noted, we have also adjusted the List on the basis of factors, such as Attrition, we believe deserve recognition. And, we have established a limited set of Conditions and Restrictions, including a fence that will, for awhile, keep pilots with the planes their company brought to the merger. In the final analysis, however, our choice of a five-year duration for the fence (from the implementation date of the “Single Operating Certificate”) was made in recognition of the reality that this is a merger in fact, not just in name.

We turn first to the competing proposals concerning the underlying integration method: Date-of-Hire versus a Status and Category/Ratio approach. Although there are advantages and disadvantages to each method, the facts of this case persuade this Board that the Status and Category approach is the more fair and equitable. To be sure, prior ALPA Arbitration Boards have merged Seniority Lists by means of date-weighted

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<sup>9</sup> In this regard, the attached list is, in fact, a current snapshot that represents only the earliest moment of the new seniority relationship.



methods.<sup>10</sup> But in this case, that method is not sufficiently responsive to the makeup of these two groups. The relative seniority mismatch between the two contingents results, when combined by Date-of-Hire, in a dramatic overloading of NWA pilots in premium flying categories, an imbalance that remains a virtual fixture in the ongoing relationship between the parties.<sup>11</sup>

The Status and Category/Ratio method, as described earlier, proceeds by establishing a series of aircraft-based categories, the staffing of which generates discrete ratios within each of those categories. In this manner, the Delta methodology seeks to continue, post-merger, roughly the same relative pre-merger standings of the respective pilots. However, there are problems with this approach, as well. The ratio-based approach creates a generally smoother distribution of pilots throughout much of the list, but it exposes large blocks of Northwest Pilots to furlough vulnerability by populating them at the bottom of the list. Thus, the interests of fairness and equity cannot be served if we accepted that proposal without modifications that reflect the realities of this particular case.

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<sup>10</sup> See Northwest post-Hearing Br., p. 3, citing *Air West* (Gill 1968) (Length of Service except for 100 Bonanza blockers); *North Central – Southern* (Vass 1980) (Length of Service); *Republic – Hughes Air West* (Bloch 1981) (Length of Service); *Northwest – Republic* (Roberts 1989) (Date of Hire). Characterizing the 24 interpretive arbitrations flowing from the Roberts award conditions and restrictions as “mundane” the Northwest representatives argue that “these mergers worked well for the carriers and their pilots.”

<sup>11</sup> Thus, as of July 1, 2008, a straight Date-of-Hire list allocates, among the top 1,500 positions, 246 to Delta Pilots and the remaining 1,254 to Northwest. The bottom 500 Pilots include approximately 320 Delta Pilots and 150 Northwest Pilots. (NWX I-31 (A)). Five years later, there are 1,195 Northwest Pilots to Delta’s 305 among the top 1,500 positions. (NWX I-31(B)). Even 10 years later, in 2018, while Delta has gained the advantage among the first 1,500 positions (816 to 684), the first 750 jobs are populated, 2:1, by Northwest Pilots. The Delta pilots fare relatively well in 2023 – 15 years after the merger – but the community of pilots affected by the methodology has, by then, shrunk to about 5,000. (NWX I-33 (A)).

Because we are also mindful that attenuated disputes too frequently have emanated from other seniority integration decisions, we have opted for a list that seeks to achieve relative simplicity in its construction and its application. In this regard, we have rejected the notion (proposed, from time-to-time by both parties) of numerous categories, each seeking to define and segregate groups of aircraft according to various operating characteristics. We have chosen, instead, to recognize the fleets as divided simply into wide-body and narrow-body groupings, two for Captains, two for FOs.<sup>12</sup> For purposes of counting aircraft and staffing assumptions,<sup>13</sup> thus creating ratios in each category, we have selected a “snapshot” date of July 1, 2008.

The NWA representatives propose an earlier snapshot, based on the claim that, after December 31, 2007, Northwest stopped operating as a stand-alone entity. Beyond that date, it is argued, the Company was “managing down”, trimming its fleet in contemplation of the merger. One may reasonably assume the respective airline managements were preparing for the merger, at some level, at or before the end of 2007. We cannot conclude, however, that NWA somehow stopped normal stand-alone operations as of December 31, nor is it clear that the merger decision, as such, necessarily led to the disposition of identifiable aircraft or routes. On the other hand, there is hard evidence in the record as to fleet reductions that actually occurred<sup>14</sup> and we find no reason why this Board should speculate about December, 2007 and ignore the

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<sup>12</sup> All Delta and NWA B757s are considered wide-body aircraft for this purpose because Delta operates its B767s and 757s as a combined fleet. (See NX-IV, Tab 11.)

<sup>13</sup> For our purposes, we adopt the convention of averaging staffing levels for a one-year period prior to the snapshot date.

<sup>14</sup> See DCX-7, DX-35 and DX-36, for example. A June 27, 2008 NWA Memo details plans to reduce mainline capacity by 8.5 to 9.5 percent over the 4<sup>th</sup> quarter of 2007. Additionally, the Company advised of its decision to remove 10 B757s and 4 Airbus narrow-bodies from the fleet. These reductions were in addition to the planned reductions (to 68) of the DC-9s over the course of 2008. (See DCX 7(a), 7(d).)

demonstrated state of the fleet as of the later date suggested by the Delta group.<sup>15</sup> In short, we believe the staffing ratios flowing from the July snapshot more accurately reflect the appropriate list-building assumptions.<sup>16</sup>

Another element the Board has considered in building the list is the notable, and relatively imminent, attrition of a sizable number of Northwest pilots, as contrasted with the Delta group. The abundance of older pilots on the Northwest side is matched by a considerably younger Delta contingent; a phenomenon accounted for by early retirements of Delta pilots in the months and years leading up to that Company's bankruptcy.<sup>17</sup> The DAL committee contends its proposed Status and Category/Ratio proposal should be implemented without any consideration of this Attrition imbalance. Attrition, it argues, should not be regarded an "equity" to be somehow utilized in balancing perceived imbalances in the list. The Northwest pilot representatives, for their part, vigorously urge the Board to account for the career expectations inherent in the advancement potential for NWA pilots, due to the prospect of large blocks of older pilots soon to be leaving the Northwest workforce.

The record does not permit a precise calculation of the number of NWA pilots in this position nor is there absolute certainty about the magnitude of the incremental

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<sup>15</sup> As of July 1, 2008, NWA had 79 DC-9's and 71 B-757's in its fleet, although at year-end, the DC-9 complement had been reduced to 57 to 61 DC-9's and 61 B-757's. See DRX-37 and DX-R 23, p.26.

<sup>16</sup> While we adopt the July date for purposes of Fleet count, we utilize the Seniority Lists of November 1, 2008, as representing the current pilot population.

<sup>17</sup> See NWX I-13 – Debtors' Motion "...for a Distressed Termination of the Delta Pilots Retirement Plan..." That Motion stated, in relevant part:

Since late 2001, as Delta's financial condition deteriorated, a significantly greater number of Senior Pilots than in the past elected to retire early and to take lump sums, in large part because of concerns that the Pilot Plan might be subject to a termination (as happened at U.S. Airways and United Airlines).... Since 2001, the Pilot Plan has paid approximately \$2.5 Billion Dollars in lump sums to approximately 3,200 Pilots who retired. (At pp. 20-21.)

imbalance of potential attrition favoring the pre-merger Northwest pilots.<sup>18</sup> There is no question, however, the imbalance exists. Consequently, there is no question that, in this particular case, an unadjusted ratio approach would meaningfully impact a wide range of career expectations in a manner we consider contrary to the overall goal of the ALPA Merger Policies.

The NWA representatives correctly observe that attrition favors the interests of all Junior pilots: When senior pilots depart, without regard to their pre-merger affiliation or how the seniority lists are combined, additional promotional opportunities will become available to those pilots ranked below them:

This factor stands as one of the contributions the Northwest Pilots will make to the merged group's advancement prospects. For Junior Pilots, the hundreds and hundreds of Northwest Pilots leaving active employment in the approaching years function as firm orders for growth aircraft – they mean promotions. The coming attrition establishes promotions that are certain – more certain in fact, than firm orders for aircraft, which can be renegotiated, canceled or matched with counter-veiling aircraft sales or the return of planes whose leases are expiring.<sup>19</sup>

There is merit to these observations, and while the “Pull-and-Plug” methodology, described below, recognizes NWA career expectations by advancing older pilots toward the front of the line initially; junior Delta pilots are also able to take advantage of the open slots, increasingly over the years, as the older Northwest pilots retire.

At the same time, the Board rejects the NWA proposal to adopt, as a relevant community, *all* such older Northwest Pilots. To do so would be to overweight the top

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<sup>18</sup> The Northwest pilots claim that, by 2015, 25% of that group will reach the age of 62, and will retire (notwithstanding the age 65 ceiling) while only 10% of the Delta Pilots will do so. (See NWX III 23, at 2.)

<sup>19</sup> Northwest post-Hearing Brief., p. 7. See also n. 16, *supra*. Northwest contends that, despite the FAA's revised mandatory retirement age for airline pilots effective December 13, 2007, (from 60-65) pilots will leave the Seniority Lists prior to that age as the result of normal and early retirement, medical disability, death, termination and resignation. These are events, it claims, that are mainly age-related, and the average rate of attrition will therefore increase after the age of 60. (*Id.*)

end of the Seniority List so substantially, and for so long, as to devitalize any hopes of achieving fairness and equity. Moreover, as will be noted, one may not fairly ignore other reasonable projections in evidence that must also be considered in assessing overall career expectations.

### Attrition and Other Career Expectations

To properly account for attrition considerations, the Board adopts a “Pullout/Plug in” tool by which Northwest Pilots are removed, temporarily, from the pre-merger NWA seniority list. The effect of that is to elevate all NWA pilots junior to those removed “up the ladder.” At that point, the Status and Category ratios in the four categories are calculated and applied. That done, each pulled out pilot is reinserted into the integrated list, one number senior to the pilot who was the next junior to that pilot on the stand-alone NWA list.

We have also concluded that all pilots on long-term sick (12 months or longer) should be removed from the pre-merger lists in a similar manner and inserted directly above the next junior pilot on his or her respective pre-merger list.

The “Pull and Plug” mechanism is a powerful adjustment tool, for several reasons. First, it advances the older pilots well beyond what would have been their standing on the merged list. In so doing, it invests those pilots with a substantial, if relatively short-lived, element of super-seniority. By removing older pilots and elevating junior NWA pilots into those vacated slots, as described above, the “Pull and Plug” reinvests the junior NWA pilots with the type of bidding power they would have wielded in the stand-alone Company. This is as it should be. But one must recognize, as well,

that the resultant “bump up” happens *immediately*, well before the time of any adjustment that would accompany actual attrition.

Equity demands that the Northwest pilots’ expectations not be fully foiled by the merger. Fairness, however, requires some tempering of the potential impact power of the adjustment mechanism. It would be myopic for this Board to focus solely on the stand-alone attrition expectations of the NWA pilot group. We accept they may constitute a legitimate career expectation, but one must also consider other elements reasonably regarded as potentially dampening those expectations.<sup>20</sup> The Northwest fleet, for example is composed of numerous aircraft of questionable long-term utility. NWA’s DC-9 fleet is old, inefficient, and likely scheduled for replacement. The exact timing and extent of that model’s departure is uncertain, but the record is clear that this portion of the fleet has already been substantially reduced.<sup>21</sup> Northwest Airline’s 2000 10K projected the lifespan of the DC-9 aircraft as extending to 2012. Under even the most optimistic case scenario, therefore, this is an aircraft whose time is limited.<sup>22</sup>

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<sup>20</sup> It is also appropriate to consider gains that flow from the merger. While it is true that both pilot forces are compensated relatively well, by comparison with the average U.S. airline, it is also the case that, on a stand-alone basis, Northwest Pilots were paid less than their counterparts at Delta. Due to the success of the parties in bargaining a new Joint Collective Bargaining Agreement (“JCBA”) effective October 30, 2008, (October 30, 2008, is the date of corporate closing of the merger.) Northwest Pilots enjoyed immediate benefits averaging 9.51% across the group. Delta characterizes this as equivalent to the value of one to two-and-one-half upgrades, depending on the equipment type, for each pre-merger pilot. (See DX-21 at 11-13; DX-37 at 2; Tr., 2549-55.)

<sup>21</sup> See DRX-35, at 4. See also, DCX-7, and April 3, 2008, Memorandum to NWA Pilots from the SVP of Flight Operations, notifying them that the DC-9 fleet would be reduced by year-end to 68 aircraft (from 94). The same memo also speaks to reductions in the B-757/A-320 and A-319 fleet. See also DCX-7(d), a June 27 revision to the Flying Plan, which further modifies the projected DC-9 reduction to 58.

<sup>22</sup> The 10K stated, in relevant part:

“The DC-9 aircraft have considerable remaining technological life, based upon the cycle life (capacity for a number of landings) expected by the manufacturer and other factors. The Company believes that these aircraft have economic value for the Company, given its root network and maintenance programs. The Company estimates that its DC-9 aircraft could fly on average approximately 12 more years beyond 2000 based upon the

Nor are the prospects for DC-9 utilization positive, when considered in terms of fuel efficiency, technological demands and the Northwest markets being served. Over time, particularly during bankruptcy and thereafter, Northwest has been steadily cutting the number of DC-9's – they disgorged about 50 of the most fuel-inefficient DC-9's, the DC-9-50s, while in bankruptcy. In 1997, according to the evidence, the company had 180 DC-9 aircraft in the fleet. By 2005, at the time of bankruptcy, they had 115, but by the end of 2008, the count will be about 60.<sup>23</sup> Moreover, the remaining planes are not optimally suited for the markets now served by DC-9's – the evidence strongly suggests a smaller, 76-seat aircraft would provide improved economics.<sup>24</sup> Northwest's bankruptcy restructuring plan, which included the establishment of "NewCo", a new, wholly owned subsidiary carrier, reflects plans to establish a 70-100-seat airline that NWA regarded as a proper fit for the many middle- to middle-sized city routes currently being served, albeit inefficiently, by the DC-9's. All this foreshadowed a shrinkage of Northwest's mainline fleet, combined with an increased use of regional planes which, in fact, were ordered by the Company in October of 2006.<sup>25</sup>

The record also reflects a demonstrable shift from NWA mainline domestic flying.<sup>26</sup> In September of 2008, Northwest reduced its Fourth Quarter Mainline

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manufacturer's expected life cycle for such aircraft and projected annual utilization by Northwest." (Northwest Airlines 2000 10K, at p. 15; cited in DX-31, p. 61.)

<sup>23</sup> DX-31, pp. 63, 76. See also DCX 7(d), cited *infra*, n.19.

<sup>24</sup> Transcript and evidence accompanying Evidentiary 1113 Hearing, January 18, 2006, quoted in DX-31, pp. 64, 65.

<sup>25</sup> At that time, Northwest ordered 72 regional jets, including 36 EMV-172 76-seat aircrafts for Compass, the NWA-owned regional carrier. See DX-31, p. 73 *et seq.*

<sup>26</sup> Robert Mann testified to the tradeoff of DC-9 flying for 76-seat flying. A very brief view, from July to November of 2008, reflects a drop-off of some 32% of NWA DC-9s, with flying on Airlink E75s and CR9s increasing by the same amount. (DX 33, Slide 6). On a broader scale, from May of 2007 through November of 2008, a review of the top 75 markets shows DC-9 flying reduced by about 650 flights, with

capacity by 8.5% - 9.5% as compared to 2007, and projected the removal of 14 B757 and Airbus narrow-body aircraft from its fleet. A comparison of the NWA business plan for November 2005 and the SEC 10K's with the Second Quarter 2008 10Q's reflects 44 fewer aircraft in 2008 (308, as contrasted with 352) than forecast in the Bankruptcy Plan.<sup>27</sup> Thus, on a comparative basis, the record shows Northwest generally in a mode of disposing of aircraft at a time when Delta was generally planning on expansion.

The Northwest merger representatives point out that, counter to this trend, NWA has booked orders for 18 B-787's, with options on an additional 50. With due regard for current production delays, we have factored that specific aspect of the NWA expansion projects into our overall consideration of the respective fleet growth expectations.

Questions exist, as well, as to the future of Northwest freighter business both from an equipment standpoint and in terms of the general business outlook. The 747-200 freighters attached to that enterprise are uncompetitive in an increasingly competitive arena for cargo operations and it is unclear to what extent this would have remained a vital operation for NWA.<sup>28</sup> Market conditions have changed dramatically since 2005, when demand for air cargo lift was high, particularly on routes from Asia to America.<sup>29</sup> NWA has encountered a meaningful drop-off in demand in several of the routes served by NWA.<sup>30</sup> Fuel prices have caused the 25-year-old Northwest 747's to be

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76-seat operations growing by some 750. "These," testified Mann, "are essentially mirror images of each other; the increase in 76-seat flying offset by the decline in 76-seat flying." (Tr.,p.392.)

<sup>27</sup> DX-31, pp. 101-102.

<sup>28</sup> Tr., 202-219. *See also*, DX-31, at 79-93.

<sup>29</sup> *See* Testimony of Daniel Akins, generally, Tr., I, pp. 200 *et seq.* *See, also*, DX-31, pp. 79 *et seq.*

<sup>30</sup> According to the record volume from China, for example, has fallen from about 35% in the 2003 to 2004 timeframe to about 7% in 2006-2007. Akins testified that the trans-pacific market has changed dramatically and that an economic slow-down, combined with fuel charges and surcharges and high rates



uneconomic, Chinese carriers are providing more competition and NWA has dropped its daily service to Guangzhou, China.<sup>31</sup> . In addition to being less fuel-efficient, the 747's in the NWA fleet are smaller and have a shorter range than the 747-400's flown by competitors.<sup>32</sup> The reduction in the freight fleet has been from 14 airplanes down to 10 and block hours have been decreased by 60%.<sup>33</sup> As of September of 2008, Northwest has dropped Narita/Bangkok, Singapore/Hong Kong, Narita/Manila, Narita/Taipei, Shanghai/Anchorage, Bangkok/Singapore, and Hong Kong/Manila.<sup>34</sup> These elements of the Northwest Operational Prospects may hardly be discounted as "managing down" decisions made in contemplation of the merger. Nor may they be ignored in the process of evaluating career expectations.

On the other hand, we note that Delta, too, has retrenched, in certain respects. B-777 acquisitions have been scaled back from 16 to 12 during the 2008-2011 time period. And, Delta is shrinking its regional feeder base, although those moves will not affect the existing Delta pilot force.<sup>35</sup>

None of this is to say the pilots from the respective groups should not be able to realize justifiable expectations of flying equipment that has been, or will be, brought to the merger by their carriers. In that regard, Northwest Pilots reasonably anticipated the ability to fly the premium positions in the B-747's and B-787's, whereas Delta pilots have

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for shipping by air has forced freight forwarders to consider alternative means of transportation, mostly ship.

<sup>31</sup> Tr., p. 206.

<sup>32</sup> Tom Bach, President of NWA Cargo, was quoted in May (*Air Cargo World*, May 2008) as planning 747-200 freighters being reduced from 12 to 10. See DX-17.

<sup>33</sup> Tr., p. 212. . *See also*, DX-31

<sup>34</sup> *Id.*

<sup>35</sup> DX 10, p.1.

the same expectations regarding the B-777's. We protect those respective interests by providing a fence for the premium flying that begins as of the date the Single Operating Certificate is obtained and expires five years thereafter, as detailed below.

But fairness also demands immediate recognition by all that this merger is a mutually beneficial *fait à compli*. The power and promise of the merged entities, and with it, the career expectations of all pilots will be fully realized as the constituent groups act to implement this merger. For that reason, we have limited the fence to the premium flying only; NWA's B747 and B787 and Delta's B777.<sup>36</sup>

### Constructive Notice

The parties differ as to the application of "Constructive Notice" in this case. For the reasons that follow, we accept April 14, 2008, as the Constructive Notice date, under these circumstances. The Delta Representatives accurately describe "Constructive Notice" as shorthand for a bright line test to determine which pilots, if any, hired by two separate but merging airlines should be treated as though they were hired by the merged airline.<sup>37</sup> The assumption is that, at some point -- normally the date of the merger announcement -- a new hire at one of the merging carriers will be on "Constructive Notice" that his or her career expectations are reasonably considered to be those of someone hired by the new carrier. For that reason, Constructive Notice pilots are typically placed in date-of-hire order below all other pilots from the two merging airlines.

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<sup>36</sup> Position counts utilized in constructing the List have necessarily been adjusted to recognize and account for various factors such as the impact of "Pull and Plug" methodology.

<sup>37</sup> Delta Representatives' Pre-hearing Brief, pp. 27.

In this case, well before the merger announcement, Delta had decided to hire some 400 pilots to staff summer flying.<sup>38</sup> 45 Delta pilots, however, had been approved for hire prior to the announcement and some had received various pre-hire documents, but were not actually trained or included on the seniority list until later in the year.<sup>39</sup> The Delta Representatives urge the Board to treat *all* such pilots as though they were hired before the April 14 merger announcement rather than as “Constructive Notice” pilots as of the date of the merger announcement. The DAL representatives contend that because these pilots ultimately were hired as a result of the earlier (pre-announcement) staffing decision, they should be treated as if they were pre-merger Delta pilots.

Because none actually had been hired and none had been placed on the Delta seniority list before the merger announcement, however, this Board must conclude they do not satisfy the standard test for Constructive Notice. Cases cited by the Delta representatives compel no contrary conclusion. Arbitrators in the 1977 *Saturn/TIA*<sup>40</sup> and 1981 *Pan Am/National*<sup>41</sup> mergers found cause, due to unforeseen extenuating circumstances, to deem certain pilots as having been “technically” hired before the merger announcement.<sup>42</sup> But even were one to accept that rationale, the facts here are inapposite. In the present record, we find neither extenuating circumstances sufficient

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<sup>38</sup> *Id.*,p.29. See DX 24.

<sup>39</sup> *Id.* 31 pilots were told, prior to April 14, they had been approved for training and sent a commitment letter. An additional 14 were told they were approved, but had not received a commitment letter, and four were approved for training several days after the merger announcement.

<sup>40</sup> *Saturn/TIA*(Feller 1977).

<sup>41</sup> *PanAm/National* (Gill 1981).

<sup>42</sup> *Cf. The Pilots of Northwest Airlines and The Former Pilots of Republic Airlines* (Roberts, 1989), where the Arbitrator found the affected pilots should be subject to the conditions and restrictions of the Award because “pilot classes had [by the date of the announcement] been established.” (At. p.8).

to require arbitral intervention in the name of equity nor persuasive evidence that these pilots were otherwise unfairly treated. The most that can be said for the DAL pilots at issue is that their processing was close to, but later than, the critical announcement date.

The Delta representatives also note, however, that, pursuant to a “flow-up” agreement between NWA and Mesaba, seven “Mesaba Hold Back “ pilots have been placed on the NWA seniority list and assigned hire dates prior to the merger announcement, despite their not commencing initial operating training at NWA. They claim this is contrary to ALPA Merger Policy.<sup>43</sup> We need not, therefore we do not, seek to review or resolve claimed anomalies in the Merger Policy as it may relate to Constructive Notice issues. For purposes of this decision, it is sufficient for the Board to note that, whatever the propriety of assigning hire dates to the Mesaba Hold Back pilots, there are no compelling grounds for concluding the Delta pilots at issue should be considered as having been hired prior to the merger announcement. The April 14 date is a serviceable deadline, in this case. With reference to constructing the List, the 45 DAL pilots are to be included in Category 4 for purposes of establishing the staffing ratio, but for seniority purposes, included below the most junior pre-merger NWA or DAL pilot on a date of hire basis.

Summarizing, based on the record in its entirety, we conclude a four-category list, constructed on a Status and Category/Ratio basis, will properly respond to the demands of fairness and equity in the context of these particular facts. We have, as indicated above, adopted a “snapshot date” of July 1, 2008, for constructing the category

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<sup>43</sup> Part I, Section E.4 of the ALPA Merger Policy specifies that “[t]he date of hire shall be the date upon which a pilot first appears upon the Company’s payroll as a pilot and also begins initial operational training required to perform such duties in airline operations.”

ratios, and we are incorporating the Pull and Plug mechanism described above to deal with the Arbitration issues. Constructive notice to pilots is found to have occurred April 14, 2008.

Constructing the Integrated System Seniority List.

The ISSL has been constructed from the pre-merger Delta and pre-merger Northwest pilot seniority lists in effect on November 1, 2008, as provided to the Panel by the parties, in the manner set forth below. The relative position of each pilot on the pre-merger lists remained unchanged on the ISSL.

1. All pilots on long-term sick leave (12 months or longer) were removed from the pre-merger lists.
2. The 274 oldest Northwest pilots were removed from the pre-merger list.
3. The first 3045 positions on the ISSL were filled with the first 1961 Delta pilots and 1084 Northwest pilots on the pre-merger lists in a ratio of 1961:1084 beginning with a Delta pilot.
4. The next 2433 positions on the ISSL were filled with the next 1313 Delta pilots and 1120 Northwest pilots on the pre-merger lists in a ratio of 1313:1120 beginning with a Delta pilot.
5. The next 3932 positions on the ISSL were filled with the next 2580 Delta pilots and 1352 Northwest pilots on the pre-merger lists in a ratio of 2580:1352 beginning with a Delta pilot.
6. The ISSL was completed with Delta and Northwest pilots remaining on the pre-merger lists in a ratio of 1314:957 Delta to Northwest pilots beginning with a Delta pilot until both pre-merger lists are exhausted subject to paragraph 7, below.
7. All pilots with dates of hire after April 14, 2008, were placed at the bottom of the ISSL in order of date of hire.
8. The Northwest pilots pulled in paragraph 2. were inserted directly above the next junior Northwest pilot.

9. The pilots on long-term sick leave pulled in paragraph 1. were inserted directly above the next junior pilot on his/her respective pre-merger list.

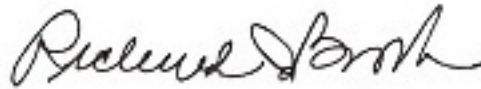
Finally, as an integral part of the ISSL we have fashioned Conditions and Restrictions that are incorporated as this Board's Award .

### AWARD

- A. The Integrated System Seniority List (ISSL) for the pilots at Delta Airlines shall be the List attached to this Award as Exhibit A.
- B. Conditions and Restrictions
  1. These conditions and restrictions are an integral part of the ISSL and shall remain in full force and effect until their expiration by their terms.
  2. Pilots hired after April 14, 2008, shall be junior to all pilots on the ISSL and shall be listed in order of date of hire consistent with the Joint Collective Bargaining Agreement (JCBA.).
  3. Neither the implementation of the ISSL nor the implementation or expiration of a condition or restriction herein, in and of itself, shall cause the displacement of any pilot from his or her then-current position (including pilots who have been awarded positions but had not commenced or completed training).
  4. For the period of five (5) years beginning with the first bid period after the issuance of the Single Operating Certificate (SOC), no pre-merger Northwest pilot may be awarded or displaced to a vacancy on a B777 aircraft or category and no pre-merger Delta pilot may be awarded or displaced to a B787 or B747 vacancy.
  5. Should the merged company take delivery of any aircraft which is/are a replacement of any aircraft covered by Paragraph 4., the captain positions and, as applicable, the first officer positions on each such replacement

aircraft will be allocated in accordance with the Paragraph 4. restrictions on the type it is replacing.

6. Paragraph 4. shall expire on the fifth (5th) anniversary of the SOC. Any bid awards or displacements effective after that date will not be subject to this restriction.
7. If there are insufficient bidders from one pre-merger pilot group for a posted or contingent vacancy on one side of the fence during the period covered by Paragraph 4., unfilled vacancies may be filled by pilots from the other pre-merger airline.
8. A pilot awarded a position (via an AE, MD or VD) to a category as a result of insufficient bidders will, for the purposes of processing future displacements in accordance with Section 22 F. of the JCBA, be considered as junior to all pilots from the pre-merger pilot group that was entitled to that category.
9. From November 1, 2008, until the first bid period following issuance of the SOC, any furloughs that are the result of the reduction in flying in the pre-merger aircraft contained in each airline's pre-merger fleet shall be borne by the pilots from that pre-merger airline regardless of their system seniority; provided, however, that any furloughs resulting from such reduction in B757 shall be shared on a 1:1 basis.
10. In accordance with ALPA Merger Policy and Paragraph 7. of the Process Agreement, representatives of the pre-merger Delta MEC and pre-merger Northwest MEC will adopt a simple process for resolving questions concerning the interpretation or application of the ISSL by this Award.
11. In accordance with ALPA Merger Policy and Paragraphs 7. and 9. of the Process Agreement, this Arbitration Board shall retain jurisdiction to resolve any unresolved disputes between the pre-merger pilot groups as to the terms of the Dispute Resolution Process and/or the interpretation or application of this Award.



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Richard I. Bloch, Esq



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Dana Edward Eischen, Esq.



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Fredric R. Horowitz, Esq.