



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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In the Matter of the Application of the	39 NMB No. 16
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO	CASE NO. R-7313 (File No. CR-7025)
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, as amended	FINDINGS UPON INVESTIGATION
involving employees of	December 12, 2011
UNITED AIR LINES AND CONTINENTAL AIRLINES	

This determination addresses the application filed by the International Association of Machinists and Aerospace Workers (IAM). IAM requests the National Mediation Board (NMB or Board) to investigate whether United Air Lines (United) and Continental Airlines (Continental) (collectively the Carriers) are operating as a single transportation system for the craft or class of Passenger Service Employees.

The investigation establishes that United and Continental constitute a single transportation system. The single transportation system also includes Continental Micronesia (CMI) and Mileage Plus, Inc. (MPI).

PROCEDURAL BACKGROUND

On October 1, 2010, United notified the Board that it had “implemented an Agreement and Plan of Merger dated May 2, 2010, resulting in the merger of United Air Lines, Inc. and Continental.” On September 20, 2011, IAM filed an application alleging a representation dispute involving the craft or class of Passenger Service Employees at the Carriers. The Carriers submitted a

position statement on October 6, 2011.

The Passenger Service Employees craft or class is represented by IAM at United under NMB Case No. R-6595. At Continental, the craft or class is unrepresented. At Continental Micronesia, the craft or class is represented by the International Brotherhood of Teamsters (IBT), under NMB Case No. R-6345.

IAM asserts that United and Continental constitute a single transportation system for representation purposes under the Railway Labor Act (RLA or Act). The Board assigned IAM's application NMB File No. CR-7025. The Board assigned Maria-Kate Dowling to investigate and requested the Carriers provide information regarding their operations. On October 6, 2011, the Carriers submitted the requested information.

#### ISSUE

Are United and Continental operating as a single transportation system? If so, what are the representation consequences?

#### CONTENTIONS

##### United and Continental

The Carriers state that United and Continental comprise a single transportation system for the craft or class of Passenger Service Employees. The Carriers agree with IAM that the single transportation system consists of United, Continental, and CMI and also assert that the craft or class should include MileagePlus, Inc. (MPI).

##### IAM

IAM agrees with the Carriers that United, Continental, and CMI comprise a single transportation system for the craft or class of Passenger Service Employees. IAM also agrees with the Carriers that the system includes MPI.

#### FINDINGS OF LAW

Determination of the issues in this case is governed by the Act, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

United and Continental are common carriers as defined in 45 U.S.C. §181, First.

II.

IAM and IBT are labor organizations and/or representatives as defined in 45 U.S.C. §151, Sixth, and § 152, Ninth.

III.

45 U.S.C. §152, Fourth, gives employees subject to its provisions, “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required. In determining the choice of the majority of employees, the Board is “authorized to take a secret ballot of the employees involved or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives...by the employees without interference, influence, or coercion exercised by the carrier.”

## STATEMENT OF FACTS

### Background

Prior to the merger, United was a wholly-owned subsidiary of UAL Corporation, headquartered in Chicago, Illinois, and operating approximately 3,400 flights a day on United and United Express. Continental was a publicly-held company headquartered in Houston, Texas, operating 2,200 daily departures, including regional flights operated on Continental’s behalf. CMI is a subsidiary of Continental that operates from a hub in the U.S. territory of Guam. CMI is managed entirely by Continental; it utilizes the Continental name, livery, and logo; and its flights are marketed through the Continental reservations office and website.

On October 1, 2010, United notified the Board that on that date it “implemented an Agreement and Plan of Merger dated May 2, 2010, resulting in the merger of United Air Lines, Inc. and Continental.” Since October 1, 2010, the Carriers have informed their customers of the merger. The message has been communicated through emails from new Chief Executive Officer (CEO) Jeffrey A. Smisek to members of both frequent flier programs; through advertisements in national media outlets; through information posted on the Carriers’ websites; through a video by Smisek shown as part of pre-flight announcements on both Carriers; through articles in the Carriers’ in-flight magazines; and through other media outlets.

Passenger Service employees at United are represented by the IAM. As of October 6, 2011, there were approximately 7,463 employees on active status and approximately 250 employees on authorized leave status. Additionally, there were approximately 2,118 employees on furlough.

At Continental, there are approximately 7,736 employees on Active or leave status that fall into the craft or class of Passenger Service employees. There are also approximately 107 furloughed employees within this craft or class at Continental.

IAM also represents, under voluntary recognition, the Passenger Service Employees craft or class at MPI. There are approximately 68 employees on active or leave status, with an additional 27 furloughed employees at MPI in the Passenger Service craft or class.

Finally, IBT represents Passenger Service Employees at CMI. As of October 6, 2011, there were approximately 282 covered employees on either active or leave status, and approximately another 11 furloughed employees at CMI.

#### Common Corporate Ownership

On May 2, 2010, UAL and Continental entered into an Agreement and Plan of Merger (Merger Agreement). Under the Merger Agreement, UAL would acquire all of the outstanding stock of Continental. The Merger Agreement became effective on October 1, 2010. UAL has been renamed United Continental Holdings, Inc. (UCH), and United and Continental are currently wholly-owned subsidiaries of UCH. UCH has a single board of directors, elected by former UAL and Continental shareholders. Glenn Tilton, former CEO at UAL and United, now serves as non-executive Chairman of the UCH Board of Directors. Jeffrey A. Smisek, former CEO of Continental, now serves as President and CEO of UCH, United, and Continental.

### Management and Labor Relations

According to the declaration of P. Douglas McKeen, Senior Vice President-Labor Relations for United and Continental, on October 1, 2010, the Boards of UCH, United, and Continental approved the appointment of approximately 60 officers for the combined companies. The executive offices of the Carriers have also been combined and all senior executives are relocating to the existing United offices in Chicago. All of the managing director and director positions for the combined company were on schedule to be filled by the end of January 2011. The departments were scheduled to fill all additional management positions in the first quarter of 2011.

United and Continental have appointed a single group of officers responsible for labor relations. Michael Bonds, formerly the chief labor and human resources officer for Continental, is now Executive Vice President-Human Resources and Labor Relations for both Carriers. McKeen was formerly Senior Vice President-Labor Relations at United and is now responsible for labor relations at both Carriers. Daniel Casey, formerly Staff Vice President-Labor Relations for Continental, is now Vice President-Labor Relations for both Carriers.

### Labor Protection Provisions and Interim Agreements

According to McKeen, all of the affected employees are covered by labor protective provisions. They are entitled, under the McCaskill-Bond Amendment, to the benefits of Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions formerly issued by the Civil Aeronautics Board. Most of the existing collective bargaining agreements (CBA's) include a contractual obligation to the same effect.

At the time of the Merger Agreement, almost all of the CBAs at both Carriers had become amendable and both Carriers were involved in Section 6 negotiations with the unions. The Carriers offered to enter into joint CBAs with any union. Only the Air Line Pilots Association (ALPA) accepted the offer. In July of 2010, the Carriers entered into a Transition and Process Agreement with ALPA. Combined bargaining teams began full-time negotiations for a joint CBA in August of 2010. United, Continental, and ALPA jointly applied for mediation with the Board on December 17, 2010.

### Personnel Policies and Employee Benefits

The personnel functions of United and Continental have been combined under the leadership of Michael Bonds. R. Douglas Rose, who was formerly

Vice President-Total Rewards at United, is now Vice President-Human Resources for the combined Carrier. He has responsibility for strategic planning of human resources, compensation, and benefits for all 80,000 employees. Donna Towle, who was formerly Director of Human Resources for Continental, is Vice President-Employee Relations and manages a large team of employee relations representatives for the Carriers.

On October 1, 2010, the combined Carriers issued uniform personnel policies in a number of areas. These included the "Working Together Guidelines," the primary personnel policy governing all employees. The guidelines include a policy known as the "Working Together Expectations," which is a set of employee personnel guidelines that replaced the previous guidelines at United and Continental. On October 1, 2010, the combined Carriers also issued a common Equal Employment Opportunity policy, a common dress code for non-uniformed employees, and travel policies that provided reciprocal benefits for employees of both Carriers. According to McKeen, the combined Carriers have adopted a new compensation structure for management employees, replacing the compensation structures at United and Continental.

Through March 2011, the combined Carriers issued additional personnel policies, including a common perfect attendance reward policy, common incentive programs, common profit sharing program, common smoke-free workplace policy, common holiday schedules, common policy on office closings under adverse conditions, and a common vacation policy. On March 1, 2011, the Carriers implemented a common policy on seniority and service credit and a common performance management statement. According to McKeen, the combined Carriers will continue to harmonize remaining personnel policies and procedures through the end of 2011. The Carriers also plan to announce a common benefits package for all non-union employees of the company that will be implemented on January 1, 2012.

Before the end of 2011, the combined Carriers plan to harmonize all departments. According to McKeen, "[e]ach functional department within the combined company has developed plans for a new, combined organizational structure and the Carriers are in the process of developing migration plans that will guide the transition from the existing separate organizations to a single, combined organization over the next year."

#### FAA Operating Certificate

McKeen states that in October of 2010, the Carriers obtained approval from the FAA for a transition plan for moving to a single operating certificate.

The FAA issued the single operating certificate on November 30, 2011. The FAA has already granted Continental's request for a single operating certificate to combine it and CMI.

### Routes and Schedules

For two years prior to the merger, United and Continental had maintained a code-sharing and alliance agreement under which a large number of flights were already operated under both airlines' codes. According to McKeen, United and Continental had highly complementary route structures. They have since implemented changes to align schedules in the twelve markets where they had overlapping flights and have placed both Carriers' codes on a number of additional flights. Where flights carry both codes, they can be purchased through either Carrier's website or reservations center. Regarding further integration of flight routes and schedules, McKeen reported that during 2011, the Carriers began integrating routes and schedules by redeploying aircraft and crews and this will continue through 2012.

### Frequent Flyer Programs, Clubs, and Credit Cards

In October of 2010, the Carriers integrated frequent flyer and airport club benefits so that members at both Carriers receive benefits and club access while flying at either Carrier. The Carriers will not merge the United MileagePlus and Continental OnePass programs into a single program until the end of 2011 due to the time required to merge computer systems. In October of 2010, both Carriers did, however, begin counting flights on either Carrier toward elite status under both programs. Elite members of each program have reciprocal access to complimentary upgrades and preferred economy seating on United and Continental flights. The Carriers' airport lounges, the Red Carpet Club and the Presidents' Club, are both open to members of either club. On October 1, 2010, the Red Carpet Clubs adopted the Presidents' Club policy of offering free wireless internet access and complimentary alcoholic beverages.

### Customer Service Policies and Fees

As of August 12, 2011, the Carriers report that they have relocated operations to the same terminal at 48 airports world-wide, including all hubs. Subject to the limitations of current lease agreements and the approval of local airport authorities, the Carriers began consolidating ticket counters and gates at other airports. The Carriers are also in the process of consolidating other airport real estate, such as offices, break rooms, and storage rooms. According to McKeen, the Carriers have also established consistent minimum check-in and boarding times for both domestic and international flights, and aligned

boarding procedures across both carriers to include early boarding for uniformed military personnel, First, Business and BusinessFirst customers, elite-level frequent fliers, and families with children under the age of four. The Carriers have also aligned key customer policies and fees, including same-day flight changes, standby requests, unaccompanied minor handling, in-cabin pet acceptance, and charges for additional services.

### Reservations

On “Customer Day One” in the spring of 2011, the Carriers began implementing changes to the existing reservations systems that will permit both Carriers to handle airport check-in at kiosks for customers of either Carrier. Passengers can also shop for flights on either Carrier’s website.

### Corporate Name, Livery, and Logos

In the Merger Agreement, the Carriers agreed that the combined Carrier would be known as United, but that it would adopt a livery and marketing identity consisting of the United name and the Continental colors and logo. Aircraft will be repainted with the new livery as they are taken out of service for regularly-scheduled maintenance. The first aircraft painted with the new livery, a Continental B-737, began operating before the formal closing of the Merger Agreement. Additional aircraft with the new livery are entering service on a regular basis. Until the combined Carrier receives a single operating certificate, the newly repainted Continental aircraft must carry the statement “Operated by Continental Airlines.” Aircraft operated by the Carrier’s regional partners will be repainted in the new livery with the name United Express with repainting of those aircraft on a schedule similar to the mainline aircraft.

More widespread use of the new United marketing identity began on Customer Day One with airport signage introduced in Chicago. Since then, the Carriers have advertised under the United name and now use a combined Twitter handle (@United) and a new, single Facebook page for the combined carrier.

### Common Uniforms and Insignia

The Carriers have begun to adopt designs and select manufacturers for common uniforms for all uniformed employees. The Carriers do not expect to implement common uniforms for all of these employees until 2012. Until that time, the Carriers will issue common accessories, such as branding pins, to give the appearance of common uniforms.



### Representation of Passenger Service Employees

As noted above, IAM is the certified representative for Passenger Service Employees at United Air Lines, Inc. At United, this craft or class is composed of Baggage Service Representatives, Cargo Representatives, Customer Service Clerks, Customer Service Representatives, International Customer Service Representatives, Reservations Sales & Services Representatives, Station Operations Representatives, and Valet Room Representatives. The craft or class at Continental Airlines is unrepresented, and is composed of those employees who, according to McKeen, “perform the same basic functions as United employees within the classifications covered by the IAM agreement.” At MPI, the craft or class is represented by IAM under a voluntary recognition by the carrier. These employees also perform the same basic functions as United employees in the Customer Service Representative classification.

Finally, at Continental Micronesia, the craft is represented by the IBT. The employees are covered under a CBA which includes Fleet and Passenger Service Employees. The Board has determined that the employees who perform Fleet Service work are properly classified under the Fleet Service Employees craft or class on the United/Continental/CMI single transportation system. See *United Air Lines/Continental Airlines*, 38 NMB 217 (2011). The remaining, non fleet service employees include Airport Sales Agents, International Language Speakers, and International Service Coordinators.

### DISCUSSION

#### I.

#### The Board’s Authority

45 U.S.C. §152, Ninth, authorizes the Board to investigate disputes arising among a carrier’s employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *General Comm. of Adjustment v. M.K.T. R.R.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. v. Nat'l Mediation Brd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass’n, Int’l v. Texas Int’l Airlines*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, “the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings.”

## II.

Single Transportation System

Manual Section 19.4 provides that: “Any organization or individual may file an application, supported by evidence of representation or a showing of interest . . . seeking a determination whether a single system of transportation exists.”

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier’s stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier’s existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has been progressed.

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here, the Board investigates whether labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

14 NMB 218, 236 (1987).

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *Delta Air Lines, Inc./Northwest Airlines, Inc.*, 36 NMB 36 (2009); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron & Eastern Ry. Co., Inc.*, 31 NMB 450 (2004); *Portland & Western R.R., Inc.*, 31 NMB 71 (2003).

Further, the Board has noted that a substantial degree of overlapping ownership, senior management, and boards of Directors is critical to finding a single transportation system. *Precision Valley Aviation, Inc., d/b/a Precision Airlines and Valley Flying Serv., Inc., d/b/a Northeast Express Reg’l Airlines*, 20

NMB 619 (1993). In *Delta Air Lines/Northwest Airlines, above*, the Board found a single transportation system where the FAA had accepted the carriers' plan for transition to a single operating certificate; there was a single board of directors; the carriers and the union had reached an agreement on seniority integration; and management and human resources positions had been integrated.

In the instant case, the Carriers are wholly-owned subsidiaries of United Continental Holdings (UCH). UCH has a single board of directors and a common senior management group in place. There is a single group of officers responsible for labor relations and personnel policies and practices are in the process of being integrated. A single operating certificate was issued on November 30, 2011.

The Carriers have been aligning schedules in the markets where there are overlapping flights. The Carriers have maintained a code-sharing and alliance agreement for years and have plans to further integrate flight routes and schedules through 2012. The Carriers have begun merging their frequent flyer programs and members of both Carriers' programs are able to receive benefits while flying at either carrier. The Carriers have relocated operations to the same terminal in 48 airports, including all hubs. The Carriers have adopted a new logo and the first aircraft with the new livery has begun operating. The Carriers are also in the process of transitioning to common uniforms.

Based upon the application of the principles to the facts established by this investigation, the Board finds that United and Continental operate as a single transportation system for representation purposes. As noted in prior single carrier determinations for this Carrier, CMI is part of this transportation system. *See, e.g., United Air Lines/Continental Airlines, 38 NMB 185 (2011).*

The Board also finds that MileagePlus, Inc. (MPI) is a part of this single transportation system. MileagePlus is a wholly-owned subsidiary of Mileage Plus Holdings, LLC, which is wholly-owned by United. MPI's Passenger Service employees perform the same basic functions as United Employees in the Customer Service Representative classification. These employees are represented, via voluntary recognition, by IAM.

### CONCLUSION

The Board finds that United and Continental (including CMI and MPI) are operating as a single transportation system for representation purposes under the RLA for the craft or class of Passenger Service Employees. Accordingly,

IAM's application in File No. CR-7025 is converted to NMB Case No. R-7313 (Passenger Service Employees). Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of the craft or class. The Incumbents and Intervenors are reminded that the showing of interest on the single transportation system is governed by Manual Sections 19.601, 19.602, and 19.603. The participants are reminded that under Manual Section 19.7, existing certifications remain in effect until the Board issues a new certification or dismissal.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson  
General Counsel

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