



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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In the Matter of the Application of the	40 NMB No. 66
AIR LINE PILOTS ASSOCIATION	CASE NO. R-7369 (File No. CR-7092)
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, as amended	FINDINGS UPON INVESTIGATION
involving employees of	July 25, 2013
AIR TRANSPORT INTERNATIONAL AND CAPITAL CARGO INTERNATIONAL AIRLINES	

This determination addresses the application filed by the Air Line Pilots Association, International (ALPA). ALPA requests the National Mediation Board (NMB or Board) to investigate whether Air Transport International, Inc. (ATI) and Capital Cargo International Airlines, Inc. (CCI) (collectively the Carriers) are operating as a single transportation system for the craft or class of Flight Deck Crewmembers.

The investigation establishes that ATI and CCI constitute a single transportation system for the craft or class of Flight Deck Crewmembers.

PROCEDURAL BACKGROUND

On June 6, 2013, ALPA filed an application alleging a representation dispute involving the craft or class of Flight Deck Crewmembers at the Carriers. ALPA represents all of the employees in the craft or class of Flight Deck Crewmembers at each of the Carriers. At ATI, ALPA was certified as the representative of the Flight Deck Crewmembers craft or class in Case No. R-7217. *Air Transport International*, 37 NMB 6 (2009). At CCI, ALPA was certified

as the representative of the Flight Deck Crewmembers craft or class in Case No. R-6605. *Capital Cargo International*, 314 NMB 190 (2007). There are 132 active employees in the Flight Deck Crewmembers craft or class at the Carriers. Of those 132 employees, 99 are pre-merger ATI Flight Deck Crewmembers and 33 are pre-merger CCI Flight Deck Crewmembers. In addition, there are approximately 83 furloughed pre-merger ATI Flight Deck Crewmembers and 34 furloughed pre-merger CCI Flight Deck Crewmembers.

The Board assigned APLA's application NMB File No. CR-7092. The Board assigned Maria-Kate Dowling to investigate and requested that the Carriers provide information regarding their operations. The Carriers submitted a position statement on June 28, 2013.

### ISSUES

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

### CONTENTIONS

#### ATI and CCI

The Carriers state that ATI and CCI have merged and presently comprise a single transportation system for representation purposes of the craft or class of Flight Deck Crewmembers

#### ALPA

ALPA agrees with the Carriers that the Board should find that ATI and CCI are a single carrier.

### FINDINGS OF LAW

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

#### I.

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

II.

ALPA is labor organization and/or representative as defined in 45 USC § 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 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

Common Corporate Ownership and Control

ATI operates worldwide cargo and “combi” (both freight and passenger) charters for the express package industry and freight forwarders; government and military contracts; long term contracts with other airlines; and racehorse and other high value animal transportation. In March 2013, CCI was merged with and into ATI. CCI is no longer an extant corporate entity or division of ATI. According to the Carriers, all managerial, administrative and financial functions of CCI were eliminated and authority for those functions for the merged entity was consolidated in and transferred to ATI.

Labor Relations

The labor relations and personnel functions for the Carriers are handled through ATI’s Vice President of Flight Operations and Human Resources Department. A final and binding decision by Arbitrator Richard Bloch established an Integrated Seniority List (ISL) for the Flight Deck Crewmembers craft or class. Since March 2013, ATI and ALPA have been working under a

joint collective bargaining agreement (JCBA) that covers both the pre-merger CCI and ATI Flight Deck Crewmembers.

#### Labor Protection Provisions and Interim Agreements

Prior to the consummation of the merger, the Carriers and ALPA reached a Transition and Process Agreement containing labor protection provisions. That agreement was superseded by the JCBA and ISL which contain labor protection agreements.

#### FAA Operating Certificate

According to the Carriers, as part of the merger, CCI surrendered its Federal Aviation Administration (FAA) Part 121 operating certificate.

#### Routes and Schedules

Prior to the merger, ATI and CCI operated different types of aircraft. ATI operated DC-8s and Boeing 767s. CCI operated Boeing 727s and 757s. CCI's 727s have since been retired from service. According to the Carriers, the nature of the merged Carrier's operations and business handled by the remaining three types of aircraft does not lend itself to the combination of routes and schedules.

#### Corporate Insignia, Logos, Livery, and Uniforms

The use of CCI's corporate insignia and logos has ceased and the ATI insignia and logo is used exclusively by the Carriers. The Carriers anticipate that all of pre-merger CCI's 757 freighter aircraft will be in livery for customer DHL. One of these aircraft currently has the DHL livery and the remaining 757 freighter aircraft are scheduled to be repainted from CCI livery to DHL livery. The Carriers' 767 freighter aircraft will retain the current ATI livery and the 757 "combi" aircraft (aircraft with both freight and passenger compartments) will be painted with a new ATI livery that combines elements of the pre-merger CCI and ATI logos.

Uniforms for Flight Deck Crewmember employees will be standardized. All pilots will wear blue trousers, white shirts, and blue ties. New epaulettes and wing devices have been ordered and delivery is expected in July 2013.

## 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 Bd.*, 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

NMB Representation Manual (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/Northwest Airlines*, 36 NMB 36 (2009); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron and 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 the instant case, with the completion of the merger, CCI has ceased to exist as a corporate entity. It has surrendered its FAA operating certificate. All managerial, administrative, and financial functions are determined by ATI. All labor relations and personnel functions are also handled by ATI's Vice President of Flight Operations and its Human Resources department. An ISL has been established for the affected employees. The Carriers and ALPA have negotiated a JCBA covering the pre-merger ATI and pre-merger CCI Flight Deck Crewmembers. Uniforms have been standardized. Corporate insignia and logos have been converted exclusively to the ATI logo and insignia and the livery is in the process of being changed. The Carriers hold themselves out to the public and market themselves as a single entity.

Based upon the application of the principles to the facts established by the investigation, the Board finds that ATI and CCI operate as a single transportation system for representation purposes.

### CONCLUSION

The Board finds that ATI and CCI are operating as a single transportation system for representation purposes under the RLA. Accordingly, ALPA's application in File No. CR-7092 is converted to NMB Case No. R-7369. Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of the Flight Deck Crewmembers craft or class. Pursuant to Manual Section 19.602, any Intervenor has 30 calendar days from the date of

this determination to file an application supported by the requisite showing of interest. 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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