

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

and

Cases 5-CA-34837
5-CA-35014
5-CA-35139¹

5-CA-35244
5-CA-35419

UNION OF ALPA PROFESSIONAL AND
ADMINISTRATIVE EMPLOYEES, UNIT 1

and

STEPHEN A. NAGROTSKY, AN INDIVIDUAL

5-CA-35699

Patrick J. Cullen, Esq., and Brendan Keough, Esq., of Baltimore, MD,
for the General Counsel.
Robert D. Kurnick, Esq. of Washington, DC,
for the Charging Party.
Kathleen M. Keller, Esq., and Devki K. Virk, Esq., of Washington, DC,
for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on November 2, 8, 9, 10, 12, and 15, 2010, in Washington, DC, pursuant to a Second Amended Consolidated Complaint and Notice of Hearing (the complaint) issued on July 5, 2010, by the Regional Director for Region 5 of the National Labor Relations Board (the Board). The complaint, based upon charges filed on various dates in 2008 and 2009² by Union of ALPA Professional and Administrative Employees, Unit 1, (the Charging Party or Unit 1), and Stephen A. Nagrotsky, an individual, (Nagrotsky) alleges that Air Line Pilots Association, International (the Respondent or ALPA), has engaged in certain violations of Section 8(a)(1) and (5) of the

¹ By order dated October 29, 2010, the Regional Director severed Cases 5-CA-35139 and 5-CA-35699 from the above remaining cases due to the parties entering into an informal Board Settlement Agreement that remedied paragraphs 5 and 6 of the complaint (GC Exh. 1-QQ). Therefore, no finding will be made concerning those allegations.

² All dates are in 2009 unless otherwise indicated.

National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

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The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by promulgating and maintaining a work rule and coercing employees about a grievance pending against the Respondent. The complaint further alleges that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to provide necessary and relevant information to Unit 1, refusing to provide prior notice to Unit 1 and an opportunity to bargain with respect to the decision to layoff employees and the effects of this conduct, and without first bargaining with Unit 1 to a good faith impasse. Additionally, the complaint alleges that the Respondent discontinued its merit pay program and unilaterally implemented the terms of its April 16 last, best, and final contract offer without first bargaining with Unit 1 to a good- faith impasse.

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On the entire record,³ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party, and the Respondent, I make the following

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Findings of Fact

I. Jurisdiction

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The Respondent, a labor organization, is an unincorporated association with a place of business in Herndon, Virginia, where it represents employees in bargaining with employers. Respondent in conducting its business operations collected and received dues and initiation fees in excess of \$50,000 from its members throughout the United States and purchased and received at its Herndon, Virginia facility products, goods and materials valued in excess of \$5,000 directly from points outside the State of Virginia. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Unit 1 is a labor organization within the meaning of Section 2(5) of the Act.

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II. Alleged Unfair Labor Practices

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A. Background

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ALPA is a labor organization representing air line pilots at numerous air lines in the United States and Canada. ALPA's primary office is located in Herndon, Virginia. ALPA has offices in various locations in the United States that service pilots at a particular carrier or carriers. Unit 1 represents ALPA's professional staff, and Unit 2 represents support staff employees. Unit 1 employees include financial analysts, attorneys, paralegals, negotiators, engineers and public relations specialists. Since at least 1988, Unit 1 has been the designated exclusive collective-bargaining representative of the Unit and, since then, it has been

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³ The Motion of the General Counsel and the Charging Party to correct the transcript, dated January 24, 2011, is granted and received in evidence as GC Exh. 79.

recognized as the representative by Respondent.⁴ This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2008 through March 31.⁵

5 The Air Line industry has been faced with difficult decisions and challenges over the past several years including the loss of airlines, thousands of furloughed employees, grim industry forecasts, a nationwide recession and changes necessitated by the merger of Delta Airlines and Northwest Airlines. These dramatic changes greatly impacted ALPA and it forced them to dramatically reduce costs in 2008 and 2009 that have been difficult and painful. In this regard,
10 dues income fell to the lowest level in 10 years and staff has been reduced by more than 30% since 2002. This dramatic downsizing has had a negative impact on ALPA's financial reserves and it no longer has the flexibility to use cash reserves to fund ongoing operations.

15 In order to get its fiscal house in order in response to this new reality, ALPA made two dramatic changes in its 2009 budget. In addition to eliminating additional staff positions and leaving vacancies unfilled, it reduced national committee budgets, departmental budgets, cut spending across the board and implemented a wage freeze for senior management in 2008 and for all management and non-bargaining unit employees for 2009.

20 It was against this backdrop that ALPA entered successor collective-bargaining negotiations with Unit 1 in January 2009. Because of these financial realities, ALPA made proposals to reduce costs in the areas of wages and health care for active employees and the retiree health plan. These proposals were significant and the impact would be felt by all employees across the organization. In this regard, ALPA proposed a two year wage freeze that
25 includes a freeze on salary ranges and no increase in FICA contributions over the course of the agreement. With respect to health care, ALPA proposed that employees pay between 5-10% of medical premiums on a monthly basis in 2009 and 15% of total premiums in 2010. For retired employees, ALPA proposed to increase the age and years of service requirements from 56 years of age with 18 years of service to 65 years of age with 25 years of service, modify the
30 plan design, and increase required monthly contributions from all retirees.

35 At all material times Jalmer Johnson held the position of ALPA's General Manager and Kelly Collie served as the Director of Human Resources/Chief Spokesperson during the 2009 collective-bargaining negotiations. Senior Managing Attorney James Johnson served as a member of ALPA's negotiating committee for the 2009 negotiations as he had in previous years since at least the early 1990's.

40 Senior Attorney John Wells held the position of Unit 1 President during the period of the 2009 collective-bargaining negotiations and was an ex-officio member of the negotiating committee. ALPA employees Wayne Klocke and Russ Woody served as Unit 1's co-chairman of the negotiating committee while Eric Iverson and Paul Karg served as members during the 2009 negotiations.

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⁴ Presently Unit 1 is comprised of 164 members. Approximately, 100 work in Herndon, Virginia, with the remaining employees located in various field offices.

⁵ Respondent implemented its last, best, and final contract offer on May 7. The contract runs from April 1 to March 31, 2011. This issue will be addressed later in the decision.

B. The 8(a)(1) and (5) Allegations

1. Refusal to Provide Information

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The General Counsel alleges in paragraphs 8, 9, and 10 of the complaint that the Respondent since on or about January 5, 7, 13, and February 9, has refused to provide Unit 1 necessary and relevant information regarding which Unit 1 positions would be eliminated, the names of employees who would be laid off, and a detailed explanation of how each Unit 1 employee laid off to date, or proposed to be laid off in the future was selected.

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a. Facts

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By letter dated January 5, Unit 1 requested ALPA to provide it with information setting forth specific Unit 1 positions, if any, in MSP (Minneapolis) and/or DTW (Detroit) that will be eliminated, specific individual employees in MSP and/or DTW that will be terminated, and when the elimination and/or terminations will be effective (GC Exh. 6-par.1(b)).

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On January 7, Unit 1 orally requested that ALPA furnish it with the names of the five employees who would be laid off from the Herndon, Virginia, facility.

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By letter dated January 13, Unit 1 requested ALPA to provide a detailed explanation of how each Unit 1 employee laid off to date or proposed to be laid off in the future was selected and the identities of the employees selected for layoff (GC Exh. 8-Items a and b).

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By letter dated January 13, ALPA replied to Unit 1's request for information dated January 5. ALPA provided the information responsive to Unit 1's requests, however, it was not provided until after the job abolishment's/layoffs took place on January 8 and 9, in Herndon, Virginia (R Exh. 37).

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On February 9, Unit 1 orally requested that ALPA furnish it with the identities of the employees who would be laid off in Minneapolis, Minnesota.

On January 6, Unit 1 orally and in a January 13 letter, demanded that ALPA bargain over the decision to conduct any layoffs and the effects of this conduct (GC Exh. 8).

b. Discussion

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The Board has held that a union is entitled to requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties as the employees' exclusive bargaining representative." *Southern Nevada Builders Assn.*, 274 NLRB 350, 351, (1985). This liberal discovery-type standard nevertheless contains an important limitation: the data must be of use in fulfilling statutory duties. The "duty to furnish . . . information stems from the underlying statutory duty imposed on employers and unions to bargain in good faith with respect to mandatory subjects of bargaining." *Cowles Communications, Inc.*, 172 NLRB 1909 (1968).

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It is long-established law that the duty to bargain in good faith embodied in Section 8(a)(5) of the Act includes the obligation of employers to provide their employees' collective bargaining representatives with requested information which is relevant and necessary to the representative's duty to bargain on behalf of employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Such information may be needed for bargaining, for administering and policing

collective-bargaining agreements, for communicating with bargaining unit members, or for preserving unit employees' work, among other reasons. Information pertaining to the terms and conditions of employees in the bargaining unit is presumptively relevant, and must be provided upon request, without need on the part of the requesting party to establish specific relevance or particular necessity. *Iron Workers Local 207(Steel Erecting Contractors)*, 319 NLRB 87, 90 (1995).

The duty to furnish information requires a reasonable good faith effort to respond to the request as promptly as circumstances allow. *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). "An employer must respond to the information request in a timely manner" and [a]n unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all." *Amersig Graphics, Inc.* 334 NLRB 880, 885 (2000); see also *Newcor Bay City Division*, 345 NLRB 1229, 1237 (2005) (and cases cited therein).

Applying these principles, and particularly noting that ALPA conducted job abolishment's/layoffs of employees represented by Unit 1 in Herndon, Virginia, on January 8 and 9, Minneapolis, Minnesota, on February 19, and in Houston, Texas, on February 26, the requests for information were presumptively relevant.

Both Klocke and Iverson credibly testified that the above information requested in the January 5 letter and orally on January 7, was not provided to Unit 1 until after the job abolishment's occurred in Herndon, Virginia. Moreover, the information requested orally on February 9, and the information requested in the January 13 letter, was not provided to Unit 1. Collie did not dispute those assertions and admitted during her hearing testimony that ALPA either provided the information after the layoffs in Herndon, Virginia, or did not provide the remaining information requested by Unit 1.

Under these circumstances, I find that ALPA violated Section 8(a)(1) and (5) of the Act by not providing requested information or not providing information in a timely manner.

2. The layoff of Unit 1 employees

The General Counsel alleges in paragraph 11 of the complaint that on or about January 8 and 9, February 19, February 26, and January 29, 2010, Respondent laid off employees from its facilities in Herndon, Virginia, Minneapolis, Minnesota, and Houston Texas, without prior notice and affording Unit 1 an opportunity to bargain with Respondent regarding the decision and effects of laying off these employees, and/or without first bargaining with Unit 1 to a good-faith impasse.

a. Facts

Unit 1 and ALPA have had a long standing collective-bargaining relationship. In the parties collective-bargaining agreement for the period January 1 through December 31, 1990, at Section 10, (Severance Pay), it states in pertinent part that "In the event a Staff Employee's position is abolished and ALPA is unable to provide work of comparable pay the following severance provisions will apply based on his then current salary" (R Exh. 18). The severance section continued to appear in successor collective-bargaining agreements with additional modifications through December 31, 1991 (R Exh. 4, 11, 19, and 20). Commencing with the parties' January 1, 1992 through December 31, 1995 collective-bargaining agreement severance pay remained in place but the Section was changed from 10 to 11 (R Exh. 8). The Section 11 severance pay provisions were continued in successor agreements that were in effect from January 1, 1996 through March 31, 2008 (R Exh. 10, 13, and 14). The parties' entered into a one year extension of their collective-bargaining agreement from April 1, 2008

through March 31 (R Exh. 1). For the first time, the provisions of Section 11 were now re-titled as Recall/Rehire and Severance Pay (GC Exh. 42). The abolishment of employees' jobs in January and February 2009 that are alleged in the subject complaint occurred under the provisions of that agreement.

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Unit 1 and ALPA have experienced the impact of job abolishment's since as far back as 1985. ALPA negotiating committee member Johnson, who served on successor collective-bargaining agreement negotiating teams since 1995, testified that for the job abolishment's that occurred in 1985, 1990, 1994-1995, 2004, 2008⁶, and 2009, ALPA determined that it exclusively retained the discretion to conduct job abolishments/RIF's and even if Unit 1 had requested to negotiate over the decision to abolish positions, ALPA would have declined to do so. Each time, ALPA followed the terms of Section 10 or 11 of the parties' agreement then in effect. In that regard, Johnson and Collie testified that prior to 2009, when ALPA conducted RIF's or abolished positions, Unit 1 never requested to negotiate over the decision or the effects of that decision. Likewise, Collie and Johnson admitted that at no time during a period when negotiations occurred concerning the abolishment of employee jobs or a RIF, did Unit 1 ever explicitly waive its right to negotiate over such a decision nor did it intentionally relinquish its right to bargain on this subject. The evidence shows, however, that Unit 1 on a number of occasions during negotiations over Section 10 and 11, attempted to add a provision that employee seniority would be followed when abolishing staff positions. On each such occasion that a proposal of that nature was made, ALPA rejected it arguing unlike pilots who are fungible, the professional and administrative positions are unique to each supporting airline and seniority in job abolishment's would cause severe disruption to its experience and expertise.

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In December 2008, faced with continuing uncertainty in the airline industry, ALPA made the decision that it would have to abolish additional positions. Unit 1, however, was not informed of that decision.

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On January 5, ALPA informed Unit 1 that there would be changes in the Minneapolis office. ALPA did not mention, however, that changes would also be made in the Herndon office.

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On or about January 6, during the course of negotiations for the successor collective-bargaining agreement, and after inquiring whether ALPA was planning additional job abolishment's, Unit 1 made an oral request to bargain over any decision to abolish employee positions in Minneapolis.

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On January 7, in a meeting, ALPA informed Unit 1 representatives of its intention to abolish five Unit 1 positions in Herndon effective January 8 and 9, but did not reveal the identities of those who would be impacted. ALPA also informed Unit 1 that additional job abolishments would likely occur but that the specifics of such losses were not presently finalized.⁷

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⁶ From May to September 2008, ALPA laid off approximately 34 employees including 16 represented by Unit 1 in large part due to the April 16, 2008, determination by US Airways pilots to decertify ALPA as their collective-bargaining representative. Unit 1 did not request to negotiate over the decision to lay off employees or the effects of the decision and the resulting job abolishments were conducted under the provisions of Section 11 of the parties' collective-bargaining agreement then in effect.

⁷ Unit 1 was not notified in advance of which specific employees in Herndon would have their jobs abolished, and the majority of those employees received their specific notification on

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5 On February 18, ALPA informed Unit 1 that it intended to abolish a number of positions in the Minneapolis office on February 19, and subsequently informed Unit 1 on February 24 that it intended to abolish an additional position in Houston, effective February 26, however, it refused to provide the names of the impacted employees to Unit 1. Each of the employees subject to job abolishment's in Herndon, Minneapolis, and Houston was afforded the rights and benefits due him or her under Section 11 of the parties' collective-bargaining agreement then in effect through March 31.⁸

10 By letter dated November 6, Collie informed Unit 1 that Elaine Grittner's employment with ALPA in the Minneapolis office will end January 29, 2010 due to the merger of the Northwest Airline health and benefit plans with Delta Airlines. Since Grittner's position of benefit specialist specifically supported Northwest Airline pilots and those duties were being transferred to Atlanta for servicing by the current Delta Airlines benefits specialist, it was necessary to abolish her position (GC Exh. 44).

20 By an undated letter, in response to Collie's above letter, Unit 1 specifically requested to negotiate over the decision to abolish Grittner's position and the effects of that decision (GC Exh. 45).

25 By letter dated November 13, Collie informed Unit 1 that while it would meet with them to discuss the RIF, it would not negotiate over the decision to layoff Grittner (GC Exh. 46 and R Exh. 38, p.8-3).

30 By letter dated November 22, Unit 1 reaffirmed its request that ALPA negotiate over both the decision and the effects of the Grittner layoff (GC Exh. 47).

The record evidence establishes that when prior job abolishments/RIF's have been conducted, Unit 1 in most instances did not independently request that ALPA negotiate over the decision or the effects of implementing those actions.

b. Discussion

35 The Respondent, while admitting that it did not negotiate over the 2009-10 job abolishment/layoff of Unit 1 employees, defends its conduct on the basis of past practice, bargaining history, and that the parties had previously bargained over the Respondent's right to engage in job abolishment/layoffs. In this regard, ALPA points to the parties' collective-bargaining agreement and/or that the parties had bargained to a good-faith impasse concerning the job abolishment of Unit 1 employee Grittner when it implemented its April 16 contract offer on May 7.

45 The clear and unmistakable waiver standard is firmly grounded in the policy of the Act promoting collective bargaining. It has been applied consistently by the Board for more than 50 years and it has been approved by the Supreme Court. *NLRB v. C&C Plywood*, 385 U.S. 421 (1967).

January 8, the same day that the action was effective.

⁸ Each of these employees was provided a letter of job abolishment on or before the effective date of final separation that summarized their entitlements under the parties' collective-bargaining agreement (R Exh. 17).

Accordingly, a union has the statutory right to require an employer to bargain before making a unilateral change with respect to a term or condition of employment. Indeed, the Board has long held that the decision to layoff employees is a mandatory subject of bargaining.
5 *Toma Metals, Inc.* 342 NLRB 787 (2004); *Ebenezer Rail Car Services, Inc.* 333 NLRB 167 (2001).

Conversely, the employer's authority to act unilaterally is predicated on the union's waiver of its right to insist on bargaining. Indeed, unless discharged or waived, the duty to bargain continues during the term of the collective bargaining agreement. However, a party
10 may contractually waive its right to bargain about a subject. Where such a waiver is claimed, the test is whether the putative waiver is in "clear and unmistakable" language. Likewise, when a "management-rights" clause is the source of an asserted waiver, it is normally scrutinized by the Board to ascertain whether it affords specific justification for unilateral action.⁹

15 The clear and unmistakable waiver standard requires bargaining partners to unequivocally and specifically express their mutual intention to permit unilateral employer action with respect to a particular employment term, notwithstanding the statutory duty to bargain that would otherwise apply.

20 The Board in *Teamsters Local Union No. 71*, 331 NLRB 152 (2000), a case strikingly similar to the facts herein, rejected the respondent's argument that it was privileged to act unilaterally in laying off an employee based on the contractual language at issue. Rather, the Board found that the contract language in that case only provided for the succession of layoffs and the manner in which those layoffs would be implemented should they become necessary.
25 Accordingly, the Board concluded that the respondent had an obligation to bargain with the union over the layoff of the employee. See also, *New York Mirror*, 155 NLRB 834, 840 (1965) (severance and termination provisions are at best equivocal since they contain no specific reference to a right by the respondent to terminate operations without prior notice and bargaining with the unions).

30 It is significant to note that Section 11 of the parties' collective-bargaining agreement that ALPA relies upon in conducting the 2009 job abolishment/RIF's is titled Recall/Rehire and Severance Pay. That section addresses job abolishment but there is no mention of the word RIF or layoff. This is in stark contrast to a specific section in the Unit 2 collective-bargaining
35 agreement (Section 7.05)¹⁰ regarding RIF's that also contains a Management Rights Clause (Section 3.01) that reserves to ALPA the right to layoff employees (GC Exh. 62). Likewise, the record establishes that during successor collective-bargaining negotiations during 1991-92 and 1996, ALPA proposed that a "management rights clause" be inserted in the parties' agreement. On each occasion, Unit 1 rejected the proposal and ALPA subsequently withdrew it (GC Exh.
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⁹ The issue of a management rights clause is not present in the subject case as no such clause is contained in the parties' collective-bargaining agreement.

¹⁰ That section requires ALPA to choose employees for layoff in reverse order of seniority whenever it determines that it is necessary to lay off one or more employees in the bargaining unit.

75-77).¹¹ ALPA also specifically recognized the differences in the Unit 1 and Unit 2 collective-bargaining agreements regarding the separation of employees when it prepared background information prior to conducting a RIF in 1994-95 (CP Exh. 6).

5 The above discussion is a strong indicator that ALPA was aware of the significant limitations set forth in Section 11 when it came to the decision to abolish jobs or conduct a RIF. Indeed, ALPA negotiator Johnson admitted that there is nothing in the parties' 2004-2009 collective-bargaining agreement that provides ALPA with the absolute discretion to conduct job abolishments/RIF's.

10 The Board's *Teamster and New York Mirror* cases cited above are persuasive precedent that the succession of layoffs and the manner in which layoffs are conducted is what Section 11 contemplates. I do not find, as argued by ALPA, that Section 11 is a clear and unmistakable waiver of Unit 1's statutory right to bargain over the decision and/or the effects of bargaining unit employees' job abolishment's. This is particularly evident based on ALPA's admissions that
15 Unit 1 has never waived its right to negotiate over the decision to conduct job abolishments/RIF's nor did it intentionally relinquish its right to bargain on this subject.¹²

20 Under these circumstances, I find that ALPA's refusal to negotiate over the decision and its effects regarding the job abolishment's/RIF's in Herndon, Minneapolis, Houston and Grittner's January 29, 2010 separation from her position, violates Section 8(a)(1) and (5) of the Act.

25 ALPA's reliance on the holding in *California Pacific Medical Center*, 337 NLRB 910 (2002) for the proposition that a waiver may be inferred from the parties' past conduct due to the fact that the respondent historically exercised the right to layoff employees without prior bargaining about the decision is misplaced. Rather, unlike the subject case, the decision in that case found the parties' contract language at section 17 gave the respondent the right to
30 "determine its staffing". Accordingly, the Board upheld the administrative law judge's finding that the contract language gives the respondent the right to determine the "number of jobs" clearly meaning that it may reduce the number of jobs in the case of layoffs or job changes. Moreover, there were no discussion in that case of the Board's long held principle that a union's acquiescence in prior unilateral changes does not operate as a waiver of its right to bargain over such changes for all time, that is specifically applicable to the subject case. *Owens-Corning
35 Fiberglass*, 282 NLRB 609 (1987).

40 ¹¹ ALPA's argument that Section 8 of the parties' 1992-1995 collective bargaining agreement (R Exh. 8) is equivalent to a management rights clause is rejected. That Section addresses discipline and discharge that must be established based on just cause and does not address the issue of hiring or the layoff of employees.

45 ¹² I also note the testimony of former Unit 1 President Patrick Brennaman, who while serving on the negotiation committee in 1994-95 when ALPA abolished jobs of bargaining unit employees, credibly testified consistent with his bargaining notes that ALPA engaged in negotiations over the decision and effects of conducting those job abolishment's/RIF's (GC Exh. 78 and R Exh. 5 and 7). Additionally, in 2004, when ALPA's print shop was closed, collective-bargaining negotiations occurred with Unit 1 concerning the job abolishment of 11 print shop employees and whether benefits would be granted to those individuals (GC Exh. 72 and 73). These examples confirm that ALPA did not have a consistent and established past practice of refusing to negotiate over the decision and effects of employee job abolishments/layoffs.

3. Discontinuance of the merit pay program and/or not distributing merit pay to employees

5 The General Counsel alleges in paragraph 12 of the complaint that on or about April 1, the Respondent discontinued its merit pay program and/or did not make merit pay payments to bargaining unit employees without first bargaining to a good faith impasse.

a. Facts

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The evidence discloses that employees' whose performance appraisals were due on or about March 31, the date the parties' collective-bargaining agreement expired, had them completed in advance by their respective supervisor before they were forwarded to Human Resources for computation of the employees merit pay entitlement (R Exh. 21). The Respondent determined, however, to hold all performance evaluations for the approximately 25 employees who were due merit pay payments as it had done in previous years when the parties did not reach a successor agreement until after the expiration of the effective collective-bargaining agreement. Collie testified that merit pay is in effect for a contract year and upon the agreement's expiration on March 31, employees' merit pay entitlements ended. Accordingly, no employee whose anniversary date occurred after the expiration of the agreement was permitted to receive their merit pay entitlement. Unit 1 negotiators credibly testified and the Respondent admits that it did not notify or engage in negotiations with Unit 1 before it unilaterally held all performance appraisal evaluations and ceased making merit pay payouts on April 1. The Respondent defends its conduct on the basis that once the collective-bargaining agreement expired there was no foundation for which to make merit pay awards otherwise due to those employees whose anniversary dates occurred during the period that no contract was in effect.

It is significant to note, and admitted by Collie, that all the terms and conditions of employment including the dues check-off provisions (Section 15) were continued in full force and effect after the March 31 expiration of the parties' collective-bargaining agreement. The only exception was that the merit pay provisions were unilaterally suspended and eligible employees were prevented from receiving their merit pay entitlements.

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b. Discussion

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The fallacy of the Respondent's argument is that mandatory terms and conditions of employment continue in full force and effect after the expiration of a collective bargaining agreement and may not be changed while parties are engaged in successor collective-bargaining negotiations without the consent of the labor organization or without bargaining to a good faith impasse. *Newcor Bay City Division*, 345 NLRB 1229, 1237 (2005). In the subject case, the unilateral change of not making merit pay payments occurred on April 1, after the expiration of the parties' collective-bargaining agreement on March 31, and during the course of bargaining for a successor agreement. *Ironton Publications, Inc.*, 321 NLRB 1048 (1996) (merit pay increases). Indeed, this change occurred during a period of time before ALPA implemented its last, best, and final contract offer on May 7, and prior to ALPA's argument that a good faith impasse was reached. *Daily News of Los Angeles*, 315 NLRB 1236 (1994), enfd. 73 F. 3d 406 (D.C. Cir. 1996) (employer violated Section 8(a)(5) by discontinuing merit pay program while bargaining for an agreement).

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Based on these facts, and particularly noting the un rebutted testimony of Klocke and Iverson that the Respondent did not negotiate with Unit 1 before it ceased making merit pay distributions to eligible employees, the Respondent has violated Section 8(a)(1) and (5) of the Act.¹³

4. Implementation of the last, best, and final contract offer

a. Facts

The General Counsel alleges in paragraph 12 of the complaint that after negotiating at various times between January and May 2009 in an effort to finalize a successor collective-bargaining agreement, the Respondent on May 7, unilaterally implemented the terms of its last, best, and final contract offer dated April 16, without bargaining to a good faith impasse.¹⁴ The General Counsel and Unit 1 argue that unremedied unfair labor practices prevented a good faith impasse. Prior to the expiration of the parties' 2004-2008 agreement, ALPA and Unit 1 agreed to enter into limited negotiations to cover subjects other than wages, with the goal of reaching a one-year successor agreement that would be subject to renegotiation in 2009. Negotiations for that agreement took place in March and April 2008, and included additional protections for bargaining unit members in the event of further job abolishments. ALPA and Unit 1 agreed to a number of enhanced rights for laid-off workers under Section 11, adding new subsections G through I.

The evidence discloses that the parties commenced collective-bargaining negotiations for their successor agreement on January 5 and engaged in 26 collective-bargaining sessions that consumed over 100 hours and culminated with their last session on April 30.¹⁵

¹³ I do not find ALPA's argument that it was privileged to change the merit pay program under the *Stone Container* case doctrine, 313 NLRB 336 (1993) to be persuasive. In this regard, unlike the subject case, the doctrine can only be applied if an employer provides the union with reasonable advance notice and an opportunity to bargain about the intended change. Here, the record is clear that ALPA did not give Unit 1 advance notice that employees who were scheduled for merit pay increases after March 31 would not receive them due to the expiration of the parties' contract on that date. Further, I note that the parties' agreement to freeze wage rates going forward for all performance appraisal levels was contingent on reaching a successor collective bargaining agreement, a condition that was not achieved due to ALPA's unlawful implementation of its last, best, and final contract offer on May 7.

¹⁴ Upon the expiration of the parties' agreement on March 31, and in accordance with past practice, Unit 1 and ALPA entered into a series of "standstill agreements" for the purpose of continuing negotiations in an effort to finalize a successor collective-bargaining agreement. In this regard, the parties agreed to participate in the negotiation and mediation process and resolved that no economic action would be undertaken by either party. Additionally, Unit 1 agreed to discontinue its informational picketing and ALPA committed that no new job abolishments would occur during this period (GC Exh. 28, 29, and 30).

¹⁵ The parties collective-bargaining notes show that negotiation sessions occurred on January 5, 6, 7, 13 and 14, February 9, 10, 11, and 12, March 10, 11, 12, 14, 25, 26, 27, 28, 29, 30, and 31, and on April 1, 3, 14, 16, 17, and 30. The April 3, 14, 16, 17 and 30 negotiation sessions were held with the assistance of a Federal Mediator (GC Exh. 5 and 43 and R Exh. 15).

2009 Contract Negotiations

5 Prior to commencing negotiations on January 5, Unit I provided ALPA with its opening proposals that sought additional job security and to extend and improve recall and preferential hiring rights under Section 11 of the parties' collective-bargaining agreement (GC Exh. 4 and R Exh. 24).

10 On February 10, Unit 1 presented its proposals to revise their existing agreement. An example of these proposals include revising Section 13 to provide for accelerated vesting of retiree health benefits, revising Section 11(A) to extend recall and rehire rights to a larger group of employees for a longer period of time and doubling severance payments for laid-off employees. Additional proposals to revise Section 11(B) included extended eligibility and coverage under the group medical and life insurance plan and providing the opportunity of a
15 voluntary leave of absence of up to two years in lieu of laying-off employees, with medical benefits provided for the first year and leave time credited for purposes of severance and retiree health eligibility.

20 ALPA countered on February 11, declining Unit 1's proposals regarding revisions to job abolishment under Section 11, but offering to allow any laid-off employee the option of continuing medical coverage under COBRA for up to 24 months (GC Exh. 10).

25 Unit 1 expanded upon its prior proposal regarding Section 11 suggesting that ALPA provide 60 days notice of any reduction in force, including the location, departments and jobs affected and require ALPA to meet with Unit 1 to discuss whether the proposed RIF is necessary and possible means of averting or mitigating the RIF. Unit 1 further proposed that no full-time employee would be removed until all part-time employees had been removed, and the layoffs be done by seniority within the affected profession. After negotiations, Unit 1 withdrew its second proposal regarding part-time employees and seniority when conducting a RIF. ALPA
30 countered and proposed that 5 days notice be given to Unit 1 prior to any RIF, including the number of affected positions, the aggregate salary amount, and an offer to meet with Unit 1 to discuss the RIF.

35 On March 27, Unit 1 proposed a prohibition on additional job abolishment during the term of the parties' agreement, the extension of recall and rehire rights through the term of the agreement for employees on severance, and a requirement that all vacancies be offered first to Unit 1 members on severance, with re-training provided as necessary (GC Exh. 13).

40 ALPA countered by offering concessions on the contracting out of Unit 1 work in Section 11, offering 10 days notice prior to any RIF, and proposing that if the RIF is caused by lack of work, upon request, ALPA will meet with Unit 1 to consider any proposals for reallocation of work from non-Unit 1 personnel in order to avoid the RIF.

45 On March 28, ALPA made another comprehensive package proposal and sweetened its offer with respect to Section 11 contracting out provisions (GC Exh. 17). ALPA accepted Unit 1's proposal that any Unit 1 employee on severance as of the effective date of the new successor agreement maintains recall/preferential interview rights through the term of the agreement. Unit 1 countered by again proposing no layoffs during the term of the agreement. On March 29, Unit 1 further proposed that the no layoff clause only apply if ALPA dues revenue remained above a certain level and proposed that in the event of a RIF, employees with less than three years service be laid off first.

On April 1, ALPA substantially modified its position regarding Section 11 and offered to maintain a set number of Unit 1 positions as long as ALPA's quarterly dues revenue exceeded a certain amount. Unit 1 countered later that day, proposing that the protection extend to all employees employed as of April 1, if annual dues remained above a certain level, and that at least 160 Unit 1 positions be protected if annual dues remained above a different level then proposed by ALPA. Unit 1 reduced its prior proposal regarding advance notice before a RIF occurred from 60 to 45 days (GC Exh. 27).

On April 16, after bargaining sessions were held on April 3, 14 and 16 with the assistance of a Federal Mediator, ALPA made its last, best, and final contract offer. In a further effort to break the deadlock, additional bargaining sessions were held on April 17 and 30 (GC Exh. 34).

On April 16, Unit 1 accepted the ALPA proposal with specific exceptions regarding Section 11 (job security), Section 13 (health insurance), Section 16 (red circle employees) and Section 18 (withdrawal of mid-point grievance if an agreement is reached) (GC Exh. 39, 40, and 41 and R Exh. 34).

On May 6, ALPA met with the Unit 1 leadership to advise them that it intended to implement its last, best, and final contract offer on May 7.

On May 7, Collie transmitted the last, best, and final April 16 contract offer to all Unit 1 employees (CP Exh. 2).¹⁶

The primary issues that separated the parties from reaching a successor collective-bargaining agreement included job security, retiree health insurance, and the issue of pay increases for "red circle" employees.

Job Security

Since approximately 2002, due to financial constraints, ALPA has eliminated nearly 140 employee positions, including approximately 47 Unit 1 positions excluding those that are the subject of this case.

Because Unit 1, under these circumstances, made job security a high priority issue, ALPA offered to guarantee 95% of the number of Unit 1 positions, but not specific positions, or individuals, as long as ALPA's dues revenue remains over 90 million dollars per year as adjusted on a quarterly basis.

Unit 1 proposed to prohibit the furlough, RIF, or job abolishment of any Unit 1 employee as of April 1, as long as dues revenue stayed above 46.5 million dollars on a six-month basis (93 million dollars per year). That specific proposal requires waiting until the end of the six-month period to act. If dues drop between 46.5 million dollars and 45 million dollars on a six-month basis, Unit 1 proposed to limit any job elimination to the most junior employees, regardless of their job or location.

¹⁶ The exhibit shows that the vast majority of ALPA's last, best, and final contract offer was tentatively agreed to by both parties. For example, sections 1, 2, 4, 7, 10, 13 a-m, 14, 16, 17, 18, and 19 were agreed to during the course of negotiations. Many other sections in the final contract offer remained unchanged from the parties' prior agreement (R Exh. 34-January 5, Unit 1 opening proposals).

With respect to advance notification to Unit 1 in the event of job abolishment's or RIF, Unit 1 initially proposed (60) working days notice, reduced it to (45) days on April 15, and to (30) working days notice on April 30. ALPA was unwilling to provide advance notice other than (10) working days and remained firm in that position during the majority of the negotiation period.

5 Additionally, Unit 1 demanded to bargain about all aspects of any future decision to reduce Unit 1 staffing. ALPA agreed only to meet and discuss future reductions of staff.

Retiree Health Care

10 Because of declining revenue and the resulting financial changes that ALPA was forced to make beginning in 2007, it was necessary to cease making contributions to the retiree health fund and stop paying health care expenses for retirees out of the general operating expenses. Between January 1, 2008 and January 1, the retiree health plan became underfunded.

15 Because Unit 1 employees in the retiree health plan pay less than the Unit 2 clerical and administrative retiree employees, and they enjoy lower deductibles, co-insurance and co-pays than those paid by both management and Unit 2 retirees, it was necessary to make changes in the Unit 1 retiree health program.

20 Accordingly, ALPA proposed to increase the eligibility levels for employees with less than five years of service to age 62 with 20 years of service, and for employees hired after April 1, retiree health coverage would require reaching the age of 65 with 25 years of service. Additionally, ALPA sought to increase the premiums for Unit 1 retiree employees to create parity between the management and Unit 1 plans.

25 Unit 1 proposed a fixed dollar premium structure and no change in eligibility for current employees. The Unit 1 proposal would cost an additional \$500,000 per year in comparison to the ALPA proposal for retiree health coverage.

Red Circle Employees

30 A number of Unit 1 employees have reached the top of their salary classification and under those circumstances were foreclosed from receiving across-the-board salary increases enjoyed by other employees. Accordingly, ALPA provided the "red circle" employees with lump sum payments to alleviate the economic onus. Unit 1 proposed that the lump sum payments

35 continue for these employees and argued that with its agreement to eliminate across-the-board salary increases in 2009 and 2010, it would amount to a double loss of pay for "red circle" employees if they did not receive the additional lump sum payment.

40 ALPA's position was that a pay freeze must be applied to all employees equally and it would be inappropriate to reward "red circle" employees with additional benefits.

b. Discussion

45 The Board considers negotiations to be in progress, and thus, will find no genuine impasse to exist, until the parties are warranted in assuming that further bargaining would be futile or that there is "no realistic possibility that continuation of discussion at that time would have been fruitful." *Cotter & Co.*, 331 NLRB 787, (2000).

The Board does not lightly infer the existence of an impasse, and the burden of proving it rests on the party asserting it. *Naperville Ready Mix, Inc.*, 329 NLRB 174, 183 (1999), enf. 242 F.3d 744 (7th Cir. 2001). The existence of impasse is a factual determination that depends on a variety of factors, including the contemporaneous understanding of the parties as to the state of

negotiations, the good faith of the parties, the importance of the disputed issues, the parties' bargaining history, and the length of their negotiations. *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), *enfd. sub nom Television Artist AFTRA v. NLRB*, 395 F.2d 622,628 (D.C. Cir. (1968).

5

The Board has held that when "parties are engaged in negotiations for a collective-bargaining agreement," the employer's obligation to refrain from unilateral changes regarding mandatory subjects "extends beyond the mere duty to provide notice and an opportunity to bargain about a particular subject; rather it encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as a whole." *Register-Guard*, 339 NLRB 353, 354 (2003), quoting *RBE Electronics of S.D., Inc.*, 320 NLRB 80, 81 (1995). The employer's obligation to refrain from such changes survives the expiration of the contract and failure to meet that obligation is a violation of Section 8(a)(1) and (5) of the Act. *Newcor Bay City Division*, 345 NLRB 1229, 1237 (2005); *Made 4 Film, Inc.*, 337 NLRB 1152 (2002).

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The Board has also held if unremedied unfair labor practices have a direct, serious, and pervasive adverse effect on the bargaining process and there is a causal connection between the unremedied unfair labor practices and the parties' failure to reach agreement, a respondent can not lawfully declare impasse and implement its final contract offer. *Dynatron/Bondo Corporation*, 333 NLRB 750 (2001). Not all unremedied unfair labor practices committed before or during negotiations, however, will lead to the conclusion that impasse was declared improperly, thus precluding unilateral changes. *Alwin Mfg. Co.*, 326 NLRB 646, 648 (1998), *enfd. 192 F. 3d 133* (D.C. Coir. 1999). Indeed, only serious unremedied unfair labor practices that affect the negotiations will taint the asserted impasse. Thus, the central question to resolve is whether ALPA's unlawful conduct detrimentally affected the negotiations over the successor collective-bargaining agreement and contributed to the deadlock.¹⁷

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Applying the *Alwin* standard here, I find that there is sufficient evidence that ALPA's conduct made it harder for the parties to come to an agreement.

30

In this regard, from the outset of negotiations, ALPA refused to negotiate over the decision to abolish/layoff positions in Herndon, Minneapolis, and Houston. ALPA also did not provide Unit 1, in advance of those separations, with the names of employees or the dates the job abolishment/layoffs would occur nor did they provide information regarding the reasons certain employees were selected for separation. Both Klocke and Iverson credibly testified that the job abolishment's that occurred in Herndon, three days after the commencement of negotiations, changed Unit 1's focus and made the negotiations more difficult since they created a great deal of mistrust and increased their contentiousness. Indeed, the issue of trust was significantly breached when ALPA refused to provide Unit 1 with the names and dates for employees whose jobs were scheduled to be abolished, especially since ALPA knew which employees would be targeted prior to the job actions taking place and in the separation of the five Herndon employees did not provide notice or the identities of these employees until January 8, the day they occurred. I conclude that ALPA's conduct changed the baseline for negotiations and made it harder for the parties to come to an agreement.

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¹⁷ In *Alwain* the court identified two ways in which an unremedied ULP can contribute to the parties' inability to reach an agreement. First, a ULP can increase friction at the bargaining table. Second, by changing the status quo, a unilateral change may move the baseline for negotiations and alter the parties' expectations about what they can achieve, making it harder for the parties to come to an agreement.

It is specifically noted that one of the three key issues that separated the parties from reaching a successor agreement was job security. Thus, this was a core issue and ALPA's refusal to provide necessary and relevant information in addition to refusing to negotiate over the decision and effects to abolish positions put Unit 1 at a distinct disadvantage during the bargaining process. Therefore, it forced Unit 1 to make bargaining proposals to protect unit employees who would be impacted under Section 11 of the parties' collective-bargaining agreement rather than having the opportunity to have information that would have permitted Unit 1 to formulate proposals over the decision and the effects of the decision to abolish unit employee positions. *Caldwel Manufacturing Company*, 346 NLRB 1159, 1170 (2006) (a finding of valid impasse is precluded where the employer has failed to supply requested information relevant to the core issues separating the parties).

Under these circumstances, and in agreement with the General Counsel, I find that the parties were unable to reach an agreement due to the existence of the unremedied unfair labor practices committed by ALPA. It follows that the parties could not, and did not, reach a good-faith impasse, and that ALPA was not privileged to implement its final contract offer. Therefore, I find that ALPA violated Section 8(a)(1) and (5) of the Act when it implemented its last, best, and final contract offer on May 7.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act
2. Unit 1 is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) and (5) of the Act by delaying in or failing and refusing to provide certain information requested by Unit 1 in letters dated January 5 and 13, and orally on January 7 and February 9, 2009, which was necessary for and relevant to the performance of Unit 1's duties as the exclusive collective-bargaining representative of employees in the following unit:

All professional and administrative employees in the service of ALPA; except supervisory employees.

4. The Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally changing terms and conditions of employment including merit pay provisions without having reached agreement with Unit 1.

5. The Respondent violated Section 8(a)(1) and (5) of the Act by failing to bargain with Unit 1 over the decision to abolish jobs/lay off employees on January 8 and 9, February 19, 26, 2009, and January 29, 2010, and the effects of that decision.

6. The Respondent violated Section 8(a)(1) and (5) of the Act when it declared that the parties were at impasse in their collective-bargaining negotiations, and unilaterally implemented on May 7, 2009, without the parties having reached impasse, the proposals contained in ALPA's April 16, 2009, last, best, and final contract offer.

Remedy

5 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

10 In particular, I shall recommend that the Respondent supply the requested information other than that which has already been provided to Unit 1. I further recommend that the Respondent be ordered to place into effect all terms and conditions of employment provided for by the collective-bargaining agreement which expired on March 31, 2009, and to maintain those terms in effect until the parties have bargained to a valid impasse, or Unit 1 has agreed to the changes. Additionally, the Respondent must reinstate and make whole those employees laid off on January 8 and 9, February 19, and 26, 2009, and January 29, 2010, for any loss of pay, or other employment benefits suffered as a result of its unlawful conduct.¹⁸

20 I also recommend that the Respondent be ordered to make whole employees and former employees for any loss of wages or other benefits they suffered as a result of the Respondent's implementation of its final April 16, 2009 contract offer on May 7, 2009, including its unilateral discontinuance of bargaining unit merit pay increases on or about April 1, 2009, in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest compounded on a daily basis as provided for in *Jackson Hospital Corporation d/b/a Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

25 Lastly, I recommend that the Respondent promptly e-mail or mail the Notice to Employees consistent with Respondent's normal method of communicating with employees.

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁹

ORDER

35 The Respondent, Airline Pilots Association, International, Herndon, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

40 (a) Failing to provide Unit 1, or unnecessarily delaying in providing information that is relevant and necessary to Unit 1's performance of its duties as the collective-bargaining representative of the employees in the following unit:

45 ¹⁸ The employees are Marc Bergeron, Stephen Nagrotsky, Richard Parker, Martin Sobol, John Wiley, Doreen Clark, Midge Jamgochian, Mary Nadeau, Rob Plunkett, Sue Schemm, Jim Moody and Elaine Grittner.

¹⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

All professional and administrative employees in the service of ALPA; except supervisory employees.

- 5 (b) Failing to comply with the terms and conditions of employment that are set forth in the collective-bargaining agreement with Unit 1 that expired on March 31, 2009, until a new contract is concluded or good-faith bargaining leads to an impasse, or Unit 1 agrees to changes.
- 10 (c) Laying off employees without first giving notice and affording the opportunity to bargain in good faith over the decision and its effects to Unit 1.
- 15 (d) Unilaterally implementing changes in the terms and conditions of employment of the bargaining unit employees including merit pay provisions as provided for in the expired collective-bargaining agreement without prior notice to, and bargaining in good faith with, Unit 1 to an agreement or lawful impasse concerning any proposed changes.
- (e) Prematurely declaring impasse and unilaterally implementing new terms and conditions of employment prior to reaching a lawful impasse in collective-bargaining negotiations.
- 20 (f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- 25 (a) Furnish to Unit 1 the information that it requested on January 13 and February 9, 2009.
- (b) Upon request of Unit 1, rescind any and all changes to unit employees' terms and conditions of employment implemented on May 7, 2009, and maintain the previous terms and conditions unless and until the parties bargain in good faith to an agreement or lawful impasse concerning any proposed changes thereto, and make unit employees whole, with interest, as provided for in the remedy section of this decision.
- 30 (c) Prior to making any changes in wages, hours, and working conditions for employees in the unit, meet and bargain in good faith with Unit 1, and if an understanding is reached, embody such understanding in a signed agreement.
- 35 (d) On request, bargain with Unit 1 concerning the decision to lay off employees on January 8 and 9, February 19 and 26, 2009, and January 29, 2010, and the effects of that decision.
- 40 (e) Within 14 days from the date of this Order, offer the laid off employees reinstatement to their former jobs or, if those jobs no longer exist to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.
- (f) Reinstatement and make whole those employees laid off on January 8 and 9, February 19 and 26, 2009, and January 29, 2010, for any loss of pay or other employment benefits suffered as a result of our unlawful conduct in the manner set forth in the remedy section of this decision.
- 45 (g) Preserve and within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (h) Within 14 days after service by the Region, post at its facilities in Herndon, Virginia,

5 Minneapolis, Minnesota and Houston, Texas, copies of the attached notice marked
“Appendix.”²⁰ Copies of the notice, on forms provided by the Regional Director for
Region 5, after being signed by the Respondent's authorized representative, shall be
posted by the Respondent immediately upon receipt and maintained for 60
consecutive days in conspicuous places including all places where notices to
employees are customarily posted. In addition to physical posting of paper notices,
10 notices shall be distributed electronically, such as by e-mail, posting on an intranet or
an internet site, and/or other electronic means, if the Respondent customarily
communicates with its employees by such means. Reasonable steps shall be taken
by the Respondent to ensure that the notices are not altered, defaced, or covered by
any other material. In the event that, during the pendency of these proceedings, the
Respondent has gone out of business or closed the facilities involved in these
15 proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of
the notice to all current employees and former employees employed by the
Respondent at any time since January 5, 2009.

- (i) Within 21 days after service by the Region, file with the Regional Director a sworn
certification of a responsible official on a form provided by the Region attesting to the
steps that the Respondent has taken to comply.

20 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges
violations of the Act not specifically found.

Dated, Washington, D.C. February 15, 2011

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Bruce D. Rosenstein
Administrative Law Judge

²⁰ If this Order is enforced by a Judgment of the United States Court of Appeals, the words
in the notice reading “POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD”
shall read “POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF
APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.”

APPENDIX

5

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

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- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

20

WE WILL NOT fail to provide to Unit 1, or unnecessarily delay in providing information that is relevant and necessary to Unit 1's performance of its duties as the collective-bargaining representative of the employees in the following unit;

25

All professional and administrative employees in the service of ALPA; except supervisory employees.

30

WE WILL NOT refuse to bargain collectively by unilaterally implementing our final contract offer made on April 16, 2009 to Unit 1.

35

We WILL NOT fail to comply with the terms and conditions of employment that are set forth in the collective-bargaining agreement with Unit 1 that expired on March 31, 2009, until a new contract is concluded or good-faith bargaining leads to an impasse, or Unit 1 agrees to changes.

40

WE WILL NOT implement terms and conditions of employment that are different from those in the collective-bargaining agreement that expired on March 31, 2009, including merit pay provisions until a new contract is concluded or good-faith bargaining leads to a valid impasse, or Unit 1 agrees to changes.

45

WE WILL NOT lay off employees without first giving notice and affording the opportunity to bargain in good faith over the decision and the effects to Unit 1 as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to Unit 1 the information they requested on January 13 and February 9, 2009.

5 WE WILL, on request of Unit 1, restore, honor, and continue your terms and conditions of employment including merit pay provisions set forth in the collective-bargaining agreement with Unit 1 that expired on March 31, 2009, until a new contract is concluded or good-faith bargaining leads to an impasse, or Unit 1 agrees to changes.

10 WE WILL make employees and former employees whole, with interest, for any and all loss of wages and other benefits incurred as a result of our unlawful alteration and discontinuance of contractual benefits as set forth in the remedy section of this decision.

15 WE WILL, on request, bargain with Unit 1 concerning the decision to lay off employees on January 8 and 9, February 19 and 26, 2009, and January 29, 2010, and the effects of that decision.

20 WE WILL, offer the laid off employees reinstatement to their former jobs or, if those jobs no longer exist to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make whole those employees whom we laid off on January 8 and 9, February 19 and 26, 2009, and January 29, 2010, for any loss of pay or other employment benefits suffered as a result of our unlawful conduct in the manner set forth in the remedy section of this decision.

25 WE WILL, prior to making any changes in wages, hours, and terms of conditions for employees in the unit, meet and bargain with Unit 1 and, if an understanding is reached, embody such understanding in a signed agreement.

30 Air Line Pilots Association, International
(Employer)

Dated _____ By _____
(Representative) (Title)

35 The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

40 103 South Gay Street, The Appraisers Store Building, 8th Floor
Baltimore, MD 21202-4061
Hours: 8:15 a.m. to 4:45 p.m.
410-962-2822.

45 **THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 410-962-2864.

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