

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL

and

Cases 05-CA-34837
(formerly 18-CA-18999)
05-CA-35014
05-CA-35244
05-CA-35419

UNION OF ALPA PROFESSIONAL AND
ADMINISTRATIVE EMPLOYEES, UNIT 1

**MOTION TO REMAND CASES TO THE
REGIONAL DIRECTOR FOR SETTLEMENT**

Pursuant to Section 102.24 of the Board's Rules and Regulations, Counsel for the Acting General Counsel, on behalf of all parties to this proceeding, hereby moves that the Board remand the above-captioned cases to the Regional Director for Region 5 to effectuate a settlement of this dispute.

I. STATEMENT OF THE CASE

Upon charges filed by Union of ALPA Professional and Administrative Employees, Unit 1 (Unit 1), on July 5, 2010, the Regional Director for Region 5 issued a Second Amended Consolidated Complaint alleging that Respondent Air Line Pilots Association, International (ALPA or Respondent) violated Section 8(a)(1) and (5) of the Act. The case was tried before

ALJ Bruce D. Rosenstein on November 2, 8-10, 12, and 15, 2010 in Washington, D.C. On February 15, 2011, Judge Rosenstein issued his decision finding that ALPA had committed the violations alleged in the Complaint.

Specifically, the judge found that Respondent violated Section 8(a)(1) and (5) of the Act by: (1) 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; (2) delaying in or failing and refusing to provide Unit 1 with information related to those layoffs; (3) unilaterally changing employees' terms and conditions of employment, including merit pay provisions without having reached agreement with Unit 1; and (4) declaring that the parties were at impasse and unilaterally implementing its final contract offer, without the parties having reached a lawful, good-faith impasse.

Respondent filed timely exceptions to Judge Rosenstein's decision; the Acting General Counsel and Unit 1 each filed cross-exceptions. All parties filed answering briefs and reply briefs. These cases are currently pending before the Board.

II. MOTION TO REMAND

Since the close of briefing, the parties have taken several steps to resolve the disputes underlying these cases:

- On September 30, 2011, Respondent, Unit 1, and the Regional Director for Region 5 reached an agreement that provides for offers of reinstatement to all of the employees who Judge Rosenstein found were unlawfully laid off, and 80% of the full backpay amounts as calculated by the Regional Director. Respondent has complied with the terms of this agreement.

- During November 2011, ALPA and Unit 1 entered into a successor collective-bargaining agreement, and this agreement was ratified by the unit employees.
- By a letter dated December 27, 2011, Respondent and Unit 1 informed the Regional Director for Region 5 that they have reached a non-Board settlement resolving the remaining aspects of these cases. This non-Board settlement agreement provides for payments to unit employees to remedy ALPA's allegedly unlawful unilateral changes and unilateral implementation of its last contract offer before reaching a valid good-faith impasse. A copy of the letter dated December 27, 2011, is attached to this motion.

Counsel for the Acting General Counsel respectfully moves that under these circumstances, it will effectuate the policies of the Act to remand these cases to the Regional Director for further action consistent with the parties' non-Board settlement agreement, including withdrawal of the charges. See generally, *Independent Stave*, 287 NLRB 740, 744 (1987). Charging Party Unit 1 and Respondent have agreed to be bound by the terms of the agreements described above, and the Acting General Counsel agrees with this settlement. The settlement is reasonable in light of the Section 8(a)(5) allegations found by Judge Rosenstein as it provides for reinstatement and backpay for the employees who were [unlawfully] laid off, compensates all unit employees for the effects of Respondent's unilateral changes and imposition of its final contract offer, and has resulted in ALPA and Unit 1 reaching a ratified collective-bargaining agreement. Moreover, there is no evidence that this settlement was obtained through fraud, coercion, or duress by any of the parties. Finally, ALPA does not have a history of violating the Act or breaching previous settlements. In this case, ALPA has complied with the terms of the backpay settlement reached with Unit 1 and the Regional Director.

The Regional Director for Region 5 has reviewed the terms and conditions of the parties' private settlement and is satisfied that the allegations in the instant matter have been satisfactorily resolved and the settlement effectuates the Act.

Therefore, Counsel for the Acting General Counsel, on behalf of all parties to this proceeding, respectfully moves that the Board remand these cases to the Regional Director for Region 5 for further processing in accordance with the terms and conditions of the parties' non-Board settlement agreement.

Dated at Baltimore, Maryland this 4th day of January 2012.

Respectfully submitted,

/s/ Patrick J. Cullen

Patrick J. Cullen
Counsel for the Acting General Counsel
National Labor Relations Board, Region 5

STATEMENT OF SERVICE

I hereby certify that copies of Motion to Remand Cases to the Regional Director for Settlement were served by e-mail, on the 4th day of January 2012, on the following parties:

Kathleen Keller, Esq.
Devki K. Virk, Esq.
Mady Gilson, Esq.
Bredhoff & Kaiser
kkeller@bredhoff.com
dvirk@bredhoff.com
mgilson@bredhoff.com

Robert D. Kurnick, Esq.
Sherman, Dunn, Cohen, Leifer & Yellig, P.C.
kurnick@shermardunn.com

/s/ Patrick J. Cullen

Patrick J. Cullen
Counsel for the Acting General Counsel
National Labor Relations Board, Region 5
103 S. Gay St., 8th Floor
Baltimore, MD 21202
Patrick.cullen@nrlrb.gov
410-962-2916

BREDHOFF & KAISER, P.L.L.C.

Attorneys & Counselors

Robert M. Weinberg
Julia Penny Clark
Jeffrey R. Freund
W. Gary Kohlman
Jeremiah A. Collins
Mady Gilson
Bruce R. Lerner
Andrew D. Roth
John M. West
Douglas L. Greenfield
Roger Pollak
Anne Ronnel Mayerson
Leon Dayan
Devki K. Virk
Robert Alexander
Matthew Clash-Drexler
Abigail V. Carter

805 Fifteenth Street, NW
Washington, D.C. 20005
(202) 842-2600
Facsimile: (202) 842-1888
www.bredhoff.com



Joshua B. Shiffrin
Ramya Ravindran
Daniel A. Zibel
Douglas E. Callahan
Benjamin Takis
Kimberly Sánchez Ocasio
Osvaldo Vazquez

Jeffrey L. Gibbs
Laurence Gold
Patricia Polach
Susan G. Lahne
Sarah M. Fox
Kathleen Keller
Jenifer A. Cromwell
Tearyn J. Loving
Of Counsel

Elliot Bredhoff
(1921-2004)
Henry Kaiser
(1911-1989)

December 27, 2011

Via Electronic Mail and First Class Mail

Wayne L. Gold, Regional Director
National Labor Relations Board – Region 5
103 South Gay Street, 8th Floor
Baltimore, MD 21202

Re: Air Line Pilots Association, International
Cases No. 5-CA-34837, 05-CA-34837, 05-CA-35014, 05-CA-35244,
05-CA-35419

Dear Mr. Gold:

Charging Party the Union of ALPA Professional and Administrative Employees, Unit 1 (“Unit 1”) and Respondent Air Line Pilots Association, International (“ALPA”) request that you seek a remand of the above-captioned cases (collectively, “the Cases”) from the National Labor Relations Board to the Region so that the Region can close the case based on a non-Board settlement between Unit 1 and ALPA.

As you know, Unit 1 alleged that ALPA violated Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act (“the Act”) by failing to bargain with Unit 1 over the decisions to lay off twelve employees in January and February 2009 and failing to timely provide Unit 1 representatives with certain information in connection with those decisions, and that, as a consequence of these alleged violations, the impasse reached in May 2009 during the parties’ negotiations for a successor collective bargaining agreement (“CBA”) was tainted, making ALPA’s imposition of its last, best offer unlawful. After a hearing in November 2009 before Administrative Law Judge Bruce Rosenstein and a resulting decision by Judge Rosenstein, exceptions were filed by ALPA and cross-exceptions were filed by the General Counsel and Unit 1. The matter is currently pending before the National Labor Relations Board, with no oral argument date scheduled.

Unit 1 and ALPA have now reached a mutually satisfactory settlement and resolution of the issues raised by the Cases. This agreement was reached without fraud, coercion or duress by any of the parties, and represents a reasonable settlement in light of the nature of the alleged violations, the risks of continued litigation, and the stage of the litigation. Moreover, the Respondent ALPA has no history of violating the Act or breaching previous settlements. Accordingly, the settlement satisfied the standard set forth by the Board in *Independent Stave*, 287 NLRB 740, 744 (1987).

As you know, the Region and ALPA entered into a settlement agreement on or about September 28, 2011 resolving the potential remedy issues raised by the layoff case. This included a settlement of any potential back pay claims, and ALPA has made the agreed-upon payments. Pursuant to the agreement, ALPA also made an offer of reinstatement to each of the 12 individuals involved. ALPA has complied fully with its obligations under that agreement.

In addition, ALPA and Unit 1 have reached a full settlement of all remaining aspects of the Cases. This includes payments to settle claims on behalf of certain "red-circled" employees who Unit 1 and the General Counsel alleged should have received payments between 2009 and 2011, as well as an amount paid by ALPA to Unit 1 in settlement of the claims involving other changes in terms and conditions implemented after ALPA declared impasse in May 2009.

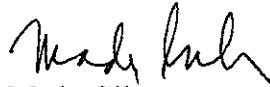
Please contact us if you have any additional information is required.

Thank you for your assistance in resolving this matter.

Sincerely,



Robert Kurnick
Sherman, Dunn, Cohen, Leifer & Yellig,
P.C.
900 7th Street, NW, Suite 1000
Washington, DC 20001
Kurnick@shermardunn.com
Counsel for the Charging Party



Mady Gilson
Bredhoff & Kaiser, PLLC
805 Fifteenth Street – 10th Floor
Washington, DC 20005
Telephone: (202) 842-2600
mgilson@bredhoff.com
Counsel for the Respondent