BEFORE AIR WISCONSIN AIRLINES
SYSTEM BOARD OF ADJUSTMENT

IN THE MATTER OF THE ARBITRATION BETWEEN **AIR WISCONSIN AIRLINES** ("Employer," "Company" or "Air Wisconsin") AND **AIR LINE PILOTS ASSOCIATION, INTERNATIONAL** ("Union" or "ALPA") Case No. ARW-12-15 Arb. Case No. 12/065	**UNION GRIEVANCE** (Grievance challenging implementation of new computer protocol allegedly starting pilots' pay at point of actual aircraft movement during "push back", but still using DBB as trigger for purposes of Actual Flight Time calculations.)

OPINION AND AWARD

Union Member

Reed Donoghue

Employer Member

Matthew Hintze

Neutral Chair

Elliott H. Goldstein

Appearances:

On Behalf of the Union:

Christopher M. Brown, Esq., Labor Relations Counsel, ALPA
Capt. William Patterson, ARW Grievance Chair, Witness
Capt. Richard Swindell, ARW MEC Chair, Witness
Capt. Kristen Brown, ARW FOQA Chair, Witness
Capt. Robert Burgess, ARW Negotiating Committee Member, Witness
Maggie Eichoff, ARW Grievance Committee Member
Brian Milburn, ARW Grievance Committee Member

On Behalf of the Employer:

Kevin M. Kraham, Esq., Littler Mendelson, P.C.
Jennifer W. Thomas, Esq., Littler Mendelson, P.C.
Capt. Robert Frisch, VP Flight Operations, Witness
Capt. Edward Leverton, Chief Pilot, Director of Flying, Witness
Joel Kuplack, Senior VP, Chief People Officer

I. INTRODUCTION

The hearing in this case was held on April 18, 2013, at Hilton Garden Hotel, 10 East Grand Avenue, Chicago, Illinois, commencing at 9:00 a.m., before the undersigned members of this Board who were all duly appointed by the parties to hear the instant matter and to render a final and binding decision by Majority opinion. At the hearing, the parties were afforded full opportunity to present such evidence and argument as desired, including examination and cross-examination of witnesses. A 260-page stenographic transcript of the hearing was made. The Union and the Employer each submitted post-hearing briefs, which were both received by the Arbitrator on August 11, 2013, whereupon the evidentiary record was officially declared closed. The Chair apologizes for the delay in the issuance of this Opinion and Award caused by his two surgeries and recuperation time and appreciates the Parties' indulgence.

** I will insert particulars or delete if the Board does not request an Executive Session.

II. STATEMENT OF THE ISSUE

The parties were unable to agree on the issue to be decided in this matter. However, the Board finds that the issue to be decided is:

- Did the Employer violate the parties' labor agreement when, on July 20, 2012, it implemented changes to its computerized tracking systems which included a modification to long-standing practice in determining the point at which Actual Flight Time, and with it pilot pay, begins? If so, what shall now be the remedy?

III. RELEVANT CONDUCT RULES AND CONTRACT PROVISIONS

2001-2011 COLLECTIVE BARGAINING AGREEMENT

SECTION 1 – RECOGNITION AND SCOPE

***

J. Management Rights.

Subject to the provisions of this Agreement, the work direction of pilots, the right to plan, direct and control operations, the right to introduce new and improved methods or facilities, the right to determine the amount of supervision necessary, schedules, establishment of qualifications and performance standards, increase or decrease in employment, the making and enforcing of reasonable rules to assure orderly and efficient operations, and the right to hire, transfer, demote and discharge or suspend for cause are rights vested in the Management of the Company insofar as such matters concern wages, hours, or conditions or employment. Any of the rights the Company has prior to the signing of this Agreement are retained by the Company except those specifically modified by this Agreement.

SECTION 2 – DEFINITIONS

Paragraph A.

"ACTUAL FLIGHT TIME" or "FLIGHT TIME" means the time from the moment an aircraft moves from the blocks, under its own power or under tow, until the aircraft blocks in, on a leg-by-leg basis.

Paragraph E.

"BLOCK TIME" means scheduled or Actual Flight Time, on a leg-by-leg basis, whichever is greater.

Paragraph BB.

"PUSHBACK TIME" means the period of time from when the aircraft leaves the blocks and is under tow until such time as the aircraft moves under its own power.

SECTION 3 - COMPENSATION.

***

C. Duty Pay/Trip Pay

1. When a pilot is assigned to duty by the Company, he will be paid the greater of the following:

a. One (1) hour of pay for every two (2) duty hours.

b. One (1) hour of pay for four (4) trip hours.

c. Three (3) hours of pay for each calendar day or portion thereof a pilot is away from domicile (from the time commencing forty-five (45) minutes before scheduled domicile departure until fifteen (15) minutes after block-in at his domicile). This paragraph will not apply to a calendar day if the pilot was not scheduled to be on duty that day, but remained on duty because of unanticipated problems such as weather, mechanical, air traffic, and the pilot is released from duty no later than 0200 local time.

d. Actual Flight Time; or

e. Scheduled flight time.

When computing trip value, the above calculations will be used and will apply to all scheduled and unscheduled operations.

SECTION 12 – HOURS OF SERVICE.

***

D. Rest Requirements
***

3. Rest and Block Time

a. A pilot who is scheduled to exceed seven (7) hours of block time in a duty period will be scheduled for at least nine (9) hours rest at the hotel.

b. A pilot who actually exceeds eight (8) hours of block time in a duty period will receive at least ten (10) hours of rest at the hotel.

c. A pilot who actually exceeds eight and one-half (8.5) hours of block time in a duty period will receive at least eleven (11) hours of rest at the hotel.

SECTION 21 – SYSTEM BOARD OF ADJUSTMENT

The Board shall have jurisdiction over disputes that arise out of grievances or out of interpretation or application of any of the terms of this Agreement. The jurisdiction of the Board shall not extend to proposed changes in hours of employment, rates of compensation or working conditions covered by existing agreements between the parties, unless the parties so agree, in writing.

SECTION 26 – GENERAL

Paragraph D.

> Nothing in this Agreement will limit or deny a pilot any rights or privileges to which he may be entitled under the Railway Labor Act, as amended.

Paragraph Q., Monitoring Devices.

> 4. The Company shall notify the MEC Chairman and the ALPA Contract Administrator in writing, not less than ninety (90) days prior the installation of any device, equipment, or system that is capable of monitoring and/or transmitting pilot performance data on an aircraft.

IV. FACTUAL BACKGROUND

This matter concerns the interpretation and application of the term "Actual Flight Time," or "Flight Time," as set out in Section 2, Paragraph A of the parties' labor agreement in the context of an alleged long-standing past practice of starting the clock on Actual Flight time at the point that the pilot-in-command completes the following: shuts the cabin door, illuminates the exterior beacon and releases the parking brake, referred to by both parties as the "door/beacon/break" point ("DBB"), as reported by the flight crew. For purposes of this case, we can say that "Actual Flight Time" is what determines

pilot pay.[1] The dispute centers on a change to the alleged practice whereby the Company, in some instances, began resetting the clock on Actual Flight Time to coincide with the point that GPS tracking detected actual movement of the aircraft from the "blocks."

The record does not reveal whether the current language defining Actual Flight Time predates the parties' current labor agreement, which went into effect in 2001. On the other hand, Union witnesses testified that the practice of initiating Actual Flight Time based on DBB not only predates the current labor agreement, but also dates back decades to a time when many of the pilots affected by it were not yet born and when pilots consulted "an on-board clock, a wrist watch, the bar room clock visible through the window of the terminal or whatever device was most convenient" when reporting times to the Company (Union Brief, pp. 4-5).

The most senior of the Union's witnesses, Captain Robert Burgess, who as of the date of the present hearing had been a pilot with this Company for 14 years, we importantly note, testified at length as to the procedures followed in readying an aircraft for flight in place during Captain Burgess' tenure of employment. He described a series of procedures, known as the

[1] Section 3, Compensation clearly sets out a variety of possible methods for determining pilot pay. However, this dispute involves only the option wherein pay is determined by Actual Flight Time.

"before start checklist," which are followed in preparing the aircraft for pushback from the gate. The steps before pushback include checking the status of the flight and departure, ensuring that the passengers and supplies are on board and running through a series of checks as to the overall condition of the aircraft, i.e. switch positions, fuel status, braking systems. Burgess went on to state that once the "before start checks" and paperwork are completed, the door is closed, and the pilot turns on the beacon and releases the brake. The call for pushback from the gate is then made, and the DBB, prior to 2005, was then called into the Company as a beginning of Actual Flight Time for pay purposes.

The brake is again set after pushback is complete, Burgess added in his at-hearing testimony. The engines are then started and the crew performs an "after start check" of the aircraft's systems and status. Immediately thereafter, the pilot calls for taxiing instructions. Once again, according to Burgess, Actual Flight Time, i.e. pilot pay, historically began at the point that the door was closed, the beacon had been turned on and the pilot had released the brake in preparation of the pushback.

Sometime in 2005, Captain Burgess testified, the Company introduced a new on-board computer system known as the Aircraft Communications Addressing and Reporting System ("ACARS"), onto all its aircraft. Burgess emphasized in his testimony that,

pre-ACARS, the DBB point was noted and called in by the pilot. After ACARS, but, however, before the change at issue here, the DBB point was recorded by the ACARS system, the parties agree. ACARS, which appears to be used by other airlines as well, was designed to monitor and report a variety of events and performance measures to the Company. From the point of its introduction into the Company's fleet, ACARS took over the job of reporting Actual Flight Time to the Company, not the Pilots' calling in the DBB, the parties agree. Then, for the first seven years of its deployment, from 2005 until July, 2012, ACARS was programmed to mark the beginning of Actual Flight Time not at the instant of first movement, but at the point of DBB, the Board notes.

The facts of record further establish that on July 20, 2012, the Company herein implemented programming changes to its ACARS system, the full scope of which are not revealed in the record, but which the Company referred to as Version 7.6. Central to the instant dispute, included in the new version was a change in the protocol for reporting and calculating the start of Actual Flight Time. The evidence reveals that under the new and now-grieved program, and of critical significance, DBB remains the default starting point for Actual Flight Time, the facts show. However, if the "pushwait" time, which Company witnesses defined as the period of time between DBB and the

point that GPS tracking detects actual movement of the aircraft, exceeds five minutes, the starting point of Actual Flight Time for pay purposes is reset to the point that movement of the aircraft actually is detected by the ACARS system.

It is this change that precipitated the instant grievance, based on the Union's take that the parties' past practice of utilizing DBB as the beginning point of Actual Flight Time was improperly unilaterally terminated by Management, and on the Company's position that the now-available ACARS system permits the Employer for the first time to use the clear definition of Flight Time contained in Section 2.A, namely, "the time from the moment an aircraft moves from the blocks, under its own power or under tow, until the aircraft blocks in, on a leg-by-leg basis."

The Company's Director of Flying, Chief Pilot Edward Leverton, testified in some detail at the hearing in this matter. According to Chief Pilot Leverton, he notified the Chairman of the Union's Master Executive Council, Richard Swindell, of the changes in Actual Flight Time calculation being put in place in a telephone call on July 20, 2013, the same day the version 7.6 ACARS was implemented. The Company also that day posted on-board notices to its pilots of the new protocol for determining Actual Flight Time. On August 8, 2012, the Union filed a written "group grievance" challenging the implementation of Version 7.6 on the grounds that it violated contract Sections

3.C (Compensation), 12.D (Rest and Block Time) and 26.Q.4 (Monitoring Devices), as well as related past practices, including the parties' interpretation of Section 2.A.

Company witnesses testified that when ACARS was initially installed in 2005, there were concerns among Management regarding potential errors in GPS tracking. Management at that time decided against programming ACARS to mark Actual Flight Time at the point of actual movement. Instead, two Company witnesses, Chief Pilot Leverton and Vice President for the Flight Operations Frisch testified, and Management decided at the 2005 implementation of ACARS to instead use the moment of DBB to mark Actual Flight Time. These two Company witnesses further maintained that the expectation was that the time between the release of the brake by the pilot and pushback should be four to five minutes.

The thought among Management was that DBB as a starting point for Actual Flight Time would provide a four to five minute cushion that would ensure a reliable and consistent reading. Captain Frisch, the Company's Vice President for Flight Operations, testified, ". . . [W]e knew we were going to get [accurate readings] every time, it wasn't going to be prone to error." (Tr. 200)

Employer witness Frisch further testified that sometime in early 2012, he received dispatch reports which indicated an

unusual pattern of flight delays occurring at several airports, mostly during the morning. The delays, Frisch was then told, were due largely to flight crews being delayed in departing by operation of Section 12.D of the labor agreement, which governs mandatory rest periods. Captain Frisch then sent the matter to Chief Pilot Leverton for investigation.

From Leverton's investigation, the record shows it was the Company's conclusion that the problem of flight delays originated with pilots "gaming" the system by releasing the brake well before the aircraft and crew were ready for pushback, or what Captain Leverton described as releasing the brake "outside of the flows" of the "before start procedures" (Tr. 220). The belief among Management was that pilots were doing this in order to pad their pay. As a consequence of these delays, Actual Flight Time in those situations was lengthened unnecessarily on many flights, which in turn triggered a ripple effect of an unusually high number of instances where the crews were held out of service on mandated rest.

According to Captain Frisch, the Company had two options in responding to Management's findings. First, the Company might investigate individual pilots regarding compliance with established pre-flight procedures and discipline those who were found to be padding their pay. Second, the Company could begin tracking actual movement of the aircraft with GPS in order to

more accurately mark the start of Actual Flight Time, which Frisch had learned was a common practice in the industry. Given the wide-spread nature of the problem, and a belief among Management that invoking disciplinary proceedings would be "unpleasant for the parties" (Tr. 226), Management chose the second option. Management decided to keep a five-minute buffer as a courtesy to the pilots. Version 7.6 for ACARS was thereafter developed, building in the five-minute buffer from DBB to pushback as a check on pilot abuse.

On the issue of Section 26.Q.4, it is undisputed that the Company did not give the Union advance notice of the existence or development of Version 7.6, nor of the Company's intention to deploy it. According to Union witnesses, the Company agreed as part of a grievance settlement in 2010 to meet with the Union's designated "subject matter expert" on a quarterly basis to discuss any changes to ACARS before implementing them. The settlement was not reduced to writing, the Company points out. The Company also argues that when ACARS was rolled out in 2005, and again when it was revised to Version 7.5 in March, 2012, the Company in each instance acted without giving advance notice to the Union.

At any rate, the Union did not grieve the Company's action in either of these two instances, the record reveals. Additionally, the record does not reveal what changes were

included in Version 7.5 or how those changes might have impacted the terms and conditions of employment for the pilots.

V. THE US AIRWAYS AND SPIRIT AIRLINES AWARDS

The parties have each addressed two prior System Board decisions that deal with the primary issue in this present dispute. In Airline Pilots' Association and U.S. Airways, Inc., ALPA Grievance No. 03-01-01, slip op. (Fishgold, July 21, 2004), that Board considered facts nearly identical to those present here. In the U.S. Airways case, the parties' labor contract provided for pilot pay to be determined, in relevant part, based on actual "block-to-block" time. Historically, in U.S. Airways, the term "block-to-block" for pay purposes was defined, in relevant part, as "that period of time beginning when an aircraft first moves from the ramp blocks for purposes of flight . . ."

In U.S. Airways, Arbitrator Fishgold found that this language was unchanged from 1957 through the time of the dispute. During most of that same period, he wrote, the parties followed a practice of starting pilot pay at the point that the aircraft doors were closed and the parking brake was released. That practice survived through both the early days of manual pilot reporting into the era of automated reporting following that Employer's deployment of its own ACARS system, which was first installed in the late 1980. However, in January, 2004 the

Employer changed its ACARS system to start recording "out" and "in" times based on aircraft movement, as determined by a detection of wheel roll.

The Union in U.S. Airways contended, according to the written opinion of that Board, that the practice of paying pilots based on the opening and closing of the doors had effectively amended the contract language. Any change to the practice could therefore be accomplished only through collective bargaining, the union also urged. The Employer countered that the past practice had not in fact modified the clear and unambiguous language of the parties' labor contract. Even assuming a modification could be found, the Employer added, changed circumstance, i.e. improvements in technology that made accurate recording of an aircraft's movement possible, allowed for the change in practice in order to more closely track the actual language of the contract. The Employer argued that greater accuracy is not a contract violation.

The Board in U.S. Airways agreed with the Employer that the relevant labor contract's definition of "block-to-block" time was clear and unambiguous. The Majority of the Board was further persuaded that the language would prevail, as written, absent evidence that the parties truly intended to modify it by their practice. That Board then found that the record reflected no such intent, at least on the part of the Employer. Instead, the

Board found, the record showed consistent efforts by the Employer to improve the "capture" of actual block-to-block time. The Board also noted that the new procedure allowed pilots to notify the Employer of errors in the ACARS reporting of "out" times and obtain relief. Accordingly, in U.S. Airways, the Board denied the subject grievance, we note.

A different Board reached a similar result four years later in Spirit Airlines, Inc. and ALPA, 109 AAR 67 (Nolan, December 20, 2008). The Board in that case found circumstances, specifically as to historical practices and contract language, which were substantially similar to those at issue in the U.S. Airways case. In Spirit Airlines, the dispute involved a unilateral change from tracking "block-to-block" time from the point that the brake is released to the point of actual movement of the aircraft. That Board, like the Board in the earlier case, found the language of the contract to be clear and unambiguous in defining "block-to-block" time for purposes of determining pilot pay, in that it provided that the clock begins at the moment the aircraft begins to move from the ramp blocks.

The Majority of the Board in Spirit Airlines reasoned that parties "rarely ignore their written agreements" and, therefore, "the party claiming that a practice changed the contract must conclusively show that both parties so intended. It is not enough to show that the practice existed or even that the

Employer planned to continue it." Spirit Airlines, supra, at p. 12. The Spirit Airlines Board, finding no evidence that that Employer intended to change the parties' written contract by way of the historical past practice, denied the grievance.

VI. CONTENTIONS OF THE PARTIES

A. The Union

The Union's position rests on the proposition that the practice of marking the beginning of Actual Flight Time at DBB is an enforceable contractual term, this Board notes. A widely-accepted test for determining whether a particular practice is enforceable holds that to be binding, the practice "must be (1) unequivocal; (2) clearly annunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both Parties." See Elkouri and Elkouri, How Arbitration Works, p. 12-4 (7th Ed., 2012).

The Union also submits that the hallmarks of an enforceable past practice are "clarity and consistency, longevity and repetition, acceptability and mutuality (meaning that both parties must know of and regard it as the correct way of dealing with a particular situation) and constancy of the underlying circumstances. When these elements do exist, the Union adds, a past practice is enforceable, not only as a fill-in for absent language or as a clarification of ambiguous language, but as a modification of what appears, on first blush, to be clear

language." (Union Brief, pp. 15-16)(citing, Spirit Airlines, supra, at pp. 5-6).

In the instant case, Actual Flight Time has never meant the time that an aircraft is actually in flight, the Union argues. The words chosen by the parties to capture their intended meaning of the term Actual Flight Time, i.e. "the moment the aircraft moves from the blocks. . .", also failed to capture what the parties had in mind as to when a pilot's pay should begin, ALPA quickly adds. In fact, a pilot begins work well before the aircraft begins to move and he or she accepts responsibility for the flight and the well-being of the passengers and crew. The practice of marking Actual Flight Time at the moment of DBB has for decades embodied the parties' intent as to what Actual Flight Time should be used as for pay purposes: the DBB trigger point rather than actual movement from the blocks.

The fact that the practice continued for seven years even after the implementation of ACARS, and continues today in most instances even under the Company's changes to the practice, should eliminate any doubts as to that intent, the Union reasons. The parties' behavior surely amended the language of their contract, it thus concludes, even based on Arbitrator Nolan's articulated standard in Spirit Airlines quoted above.

The Company's assertion that it is merely using ACARS and GPS tracking to accomplish what it believes is the clear intent of the language, i.e., to start the clock at the point the aircraft begins to move, is absolutely not credible, the Union goes on to say. Had the Company honestly so believed, it would have programmed ACARS to calculate solely from movement from the block at the time ACARS was first implemented in 2005. That lack of credibility of the Company's claim that movement is now the key is the essence of this case, from the Union's point of view.

The simple fact is that DBB has been a reliable, consistent and fair point to start the clock on pilot pay, one with which both parties were happy, the Union insists. In fact, Employer witness Frisch testified that DBB was initially programmed into ACARS because "we knew we were going to get [accurate readings] every time, it wasn't going to be prone to error," the Union points out (Tr. 200). ALPA sees this testimony by Frisch as a clear concession that practicalities have at least since 2005 caused the Employer not to in fact go back to the terms of Section 2.A, but to measure flight time not based solely on movement from the block.

The Company's suggestion that it then acted to improve the calculation of Actual Flight Time only after finding that pilots were gaming the system by releasing the brake outside the

checklist flows is also incredible, the Union specifically contends. During the seven years that ACARS was programmed to report only DBB, from 2005 to 2012, no pilots were summoned for questioning by the Company on suspicions that they had done so, it stresses. The Company's explanation that such procedures would have been "unpleasant for the parties" is not simply believable nor is it an excuse for inaction if rules were being broken. The Company is in fact alleging that pilots were stealing time and such a serious allegation would surely have triggered a response that would be commensurate in the seriousness of a suspicion of fraud and/or theft, ALPA concludes. If alleged theft of time is the issue, then discipline from Management should be the process to correct such misconduct, this Union says.

The fact that the Company initially programmed ACARS in 2005 to capture DBB, and then retained that point as the default starting point for pilot pay in Version 7.6 in 2012, distinguishes this case from Spirit Airlines, supra, the Union next strongly asserts. The facts here prove that the parties "really intended to override their words [contained in Section 2.A] by their practice." (Union Brief, p. 21)(quoting Spirit Airlines, supra, at p. 9).

The Union goes on to insist that the elements that the Spirit Board found necessary to establish a binding practice,

i.e. clarity and consistency, longevity and repetition, and acceptability and mutuality, are all shown in the record in the case at bar, the Union directly argues. Moreover, the practice at issue affects pilot pay, a major condition of employment, the Union also asserts. There clearly is a binding practice in place that cannot be unilaterally terminated, as the Employer has attempted to do here, this Board is then emphatically told.

All factors cited by the Board in Spirit Airlines as reasons for denying that grievance are not present either, the Union continues. First, the Board in Spirit Airlines found that the contractual Management rights clause granted to the Employer the right to discontinue any past practices established prior to the labor contract at issue. However, the present Agreement between these parties in the instant case contains no such broad grant of authority to this Company, the Union contends.

Second, whereas the Spirit Airlines Board found little evidence to suggest that the parties in that case intended the relevant practice to actually amend their contract, the fact is that the Company in the instant dispute continues today to use DBB as the starting point for Actual Flight Time, which the Company mischaracterizes as a five-minute buffer, removes any doubts as to the parties' mutual intent to amend their Agreement as to the definition of Actual Flight Time, at least as it affects the starting point for pilot pay, the Union submits.

The U.S. Airways decision is also distinguishable from the current case for other reasons, the Union next suggests. The change in that case was specifically tied to aircraft movement and was based on what was then new technology that enabled the ACARS system to detect wheel roll. The change was made based on technology that was not available to the Employer prior to the change and employed a system of measurement that was reliable beyond the capability of GPS tracking. GPS technology, on the other hand, was certainly available to the Company in 2005, the facts of record disclose, the Union insists.

However, the Company in the current case chose not to use the available GPS technology at that time, specifically because the GPS technology is prone to error, the Employer's witnesses conceded. The facts here simply confirm the Company's agreement to continue the practice of using DBB to mark Actual Flight Time, all references in Section 2.A. regarding aircraft movement notwithstanding, the Union believes. That is the critical factual distinction between U.S. Airways and the instant matter, the Union strenuously maintains.

Putting aside the question of past practice, says ALPA, the Company in the current case could not in keeping with the applicable Labor Agreement deploy its new version 7.6 without giving appropriate advance notice to the Union. Section 26.Q.4 of this Labor Contract specifically requires ninety-day advance

notice to the Union before the Company installs "any device, equipment or system that is capable of monitoring and/or transmitting pilot performance and data on an aircraft." The new ACARS Version 7.6 is now equipped to record actual aircraft movement, which is clearly data regarding pilot performance, argues the Union. The Company offered nothing to suggest otherwise, ALPA goes on to say.

The Union adds that it is immaterial to this inquiry that ALPA did not grieve the initial implementation of ACARS, or when it implemented Version 7.5 in March, 2012, despite the Company's contention cited in its case-in-chief that the Union must have been aware that Section 26.Q.4 does not apply in this circumstance by virtue of the fact it did not file earlier grievances over a lack of notice. It is however ironic that the Company now defends its decision not to give notice to the Union on its understanding of the parties' past practices as to the Section, the Union notes. Additionally, two instances of acquiescence by the Union do not establish a practice not to enforce the notice requirements of Section 26.Q.4, nor do they show intent by the Union to waive the provision, the Union forcefully responds to this Employer argument. Section 26.Q.4 still operates as an unambiguous obligation for the 90 days notice as the Union sees it, the Board understands.

On the other hand, according to the Union, the parties have worked together in the past when new pilot performance systems have been put in place. The Union cites to an instance where it grieved the installation of a new system to monitor and report flap settings to the Company. In that instance, the grievance was settled by a verbal agreement that the Union's FOQA Chair would be given notice of any further changes to the monitoring systems.

At the hearing in this matter, the FOQA Chair Kristen Brown urged the importance to the pilots of getting prior notice of changes coming under the rubric of Section 26.Q.4. The pilots are stakeholders in the process, she explained. Data regarding performance and safety directly impact pilots, and pilots' representatives (this Union) are in the best position to analyze potential modifications and new technology, Brown argued. The Union therefore wants to have a say in what systems are in place and what data is collected which is the reason for the terms of Section 26.Q.4, this Union insists.

Finally, the Union raises issues with regard to the Railway Labor Act. Specifically, the Union cites various sections of the RLA that address the bargaining obligations of the Parties, particularly with respect to changes in wages. The crux of the Union's arguments on this particular issue is that the Company was obligated to bargain with the Union before implementing any

changes to the parties' Agreement that would affect pilot pay. Specifically, Section 155, RLA, first provides, in relevant part, that "no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose" (emphasis added). The Parties were in fact engaged in bargaining for a new agreement in July, 2012, but the Company decided to shortcut the bargaining process on this issue and to engage in self-help, unilaterally cutting pilot pay in all cases where, for reasons perhaps outside the pilots' control, aircraft do not begin to move from the blocks within five minutes of DBB. There is thus a statutory defect that adds to the meritorious underpinnings of the Union's arguments in this case, ALPA urges.

Management violated several provisions of the Agreement and the RLA when it implemented Version 7.6, midterm and without providing the Union notice, the Union concludes. The gravity of the injury to the pilots themselves is not material. "Ten dollars is not the significance of this case," the Union charges. Simply put, the Company had no authority to take the action it took here. The current Board should therefore grant the instant grievance in its entirety and order the Company to cease and desist from its violation and make any affected pilots whole for their losses, the Union finally demands.

B. The Company

There is no need for contract construction where the language of the contract is clear, the Company first asserts. Section 2.A. provides that "Actual Flight Time" means the time "from the moment an aircraft moves from the blocks, under its own power or under tow, until the aircraft blocks in, on a leg-by-leg basis." The language is clear. The clock is triggered by the movement of the aircraft. Section 2.A contains no references to the closing of doors, the lighting of the beacon or the releasing of the brake, all of which occur before the aircraft's movement begins, the Employer strongly asserts.

Consequently, this Board is obligated to apply Section 2.A. in accordance with the plain meaning of its terms, the Company stresses. The Company cites a number of arbitral and judicial precedents for the proposition that the instant Board is bound to apply those terms, as written, regardless of any evidence of past practice. See Lorillard, Inc., 87 LA 507 (Chalfie, 1986); United Steelworkers v. Enterprise Wheel Corp., 363 US 593 (1960). Put another way, the Boards in Spirit Airlines, supra, and U.S. Airways, supra, got it right, Management urges. In each of these cases, the Board gave controlling weight to clear contract language defining when pilot pay starts as an override to claimed past practices that in U.S. Airways and Spirit Airlines departed from unambiguous language tying the movement from the blocks to Actual Flight Time pay. The facts of both

precedent cases are substantially identical and legally indistinguishable from the facts underlying the instant matter, and this Board should follow suit in finding that the clear contractual provision should control, we are told.

The Union's efforts to distinguish the Spirit Airlines and U.S. Airways decisions fail on all fronts, the Company then counters. None of the bases cited by the Union for distinguishing this case from those earlier decisions hold any water, it argues. In particular, the respective Board in Spirit Airlines and U.S. Airways decisions clearly rested on the very point raised here, i.e., that the clear language of the contract in each case trumped the union's efforts to enforce a contrary past practice.

Indeed, extraneous considerations such as the Management rights clause in Spirit Airlines, supra, or the accuracy of the methodology chosen for detecting movement in U.S.Airways, supra, were clearly not weighty factors in the prior Boards' decisions in the earlier cases, this Board is reminded. For all intents and purposes, at least those useful to the Union's case, those earlier cases are squarely on point with the facts presented in this current dispute. The Union's attempts to distinguish U.S. Airways and Spirit Airlines are simply not persuasive, the Employer directly submits.

If anything, the circumstances in the instant matter are even less favorable to the Union's case than were the circumstance before the Spirit Airlines and U.S. Airways Boards, further says the Employer. Specifically, the Union's evidence of past practice in this case is weak, the Company asserts. The Company notes that only one of the Union's witnesses, Captain Burgess, was employed by the Company prior to the implementation of ACARS in 2005. That one witness' testimony as to the procedures he followed does not alone establish a system-wide practice of marking Actual Flight Time at DBB, nor can it establish any practice dating back to before his hire in 1999, the Employer believes.

Furthermore, the Union produced no documentary evidence establishing that the alleged mutually accepted practice existed prior to 2005, when in fact the Company elected to start Actual Flight Time at the moment of DBB for reasons having nothing to do with past practice. On the other hand, the Company points to the following testimony from its Vice President of Flight Operations Captain Robert Frisch:

> Q. And before ACARS ever came onto the property, pilots radioed in their times, right?
>
> A. Yes, they did.
>
> Q. Now were pilots at that time required to radio in or call in their Actual Flight Time starting by movement or door closure?

> A. It would have been the time that's in the collective bargaining agreement, which would have been movement.
>
> Q. How would pilots know, or did you reach a conclusion as to how pilots would know when they have to call it in . . . .
>
> A. It's in the contract.
> (Tr. 201-202).

Captain Frisch's testimony is effectively unrebutted, the Company specifically contends. Consequently, ALPA has failed to prove in this case that the alleged past practice even existed, let alone that the practice became binding.

The Company has taken no action here to change the way that it has historically tracked Actual Flight Time, the Employer then suggests. Rather, the action at issue here, implementation of Version 7.6, is part and parcel of efforts by the Company that have been ongoing for years to refine its methodologies in tracking Actual Flight Time in order to obtain the most accurate tracking protocol possible.

By the same token, the Company did not, as the Union alleges, resort to DBB under the 2005 version of ACARS in order to codify the practice that the Union now claims existed at the time. The point is that Management chose the DBB moment for purposes of obtaining reliable reports. There was not and is no clear intention on the Employer's part to amend the clear language of Section 2.A. Certainly, nothing like the mutual

intent evidence necessary for an actual contractual amendment as discussed in Spirit Airlines, the facts on this record disclose.

The Company also points to Captain Frisch's testimony:

> "We did talk about the movement, but the problem was if we would additionally program the ACARS to sense the movement, if we started having errors and it didn't sense the movement, we weren't going to get the [push] times recorded. In other words, the three [step method] that we selected, we knew we were going to get every time, it wasn't going to be prone to error, and if everybody followed the procedure the way it should be followed, it was going to match up with the terms of the Collective Bargaining Agreement." (Tr. 199-200)

Setting ACARS to start Actual Flight Time at DBB provided a five-minute buffer that ensured a reliable report, and therefore compliance with pilot pay requirements, the Company therefore argues. The Union has done nothing more here than allege that the Company intended to codify existing practice when implementing ACARS in 2005. Argument is not evidence; conjecture is not proof, it goes on to say. The Union produced no witnesses with first-hand knowledge of the implementation of ACARS and no evidence that anyone with knowledge of its implementation ever suggested that codifying existing practice was the motivation behind the Company's decisions at the time. That fact is critical to the Employer's position, the Company avers. The Union needed to show mutual intent to amend Section 2.A in 2005, and that was a test it did not satisfy, the Employer maintains.

The Company changed to Version 7.6 only after it learned that pilots were abusing the five-minute buffer by completing DBB before aircraft movement was imminent, the Employer avers. The results of Captain Leverton's investigation confirmed for Management that some pilots were padding their pay in breach of Section 2.A. The Company had little choice but to implement a new logic within ACARS that would be less open to pilot manipulation, the Company believes. That is what occurred in the instant case, the Employer specifically urges, without any convincing rebuttal from ALPA, it also contends.

The industry standard for tracking pilot pay is to track actual movement of the aircraft, the Company then emphatically adds. The Company nevertheless decided to retain DBB in Version 7.6 as the default starting point for pilot pay because the resulting five-minute buffer is consistent with the expectation that pushback will occur within that buffer. The GPS tracking system is there only as a check on a tendency of some pilots to extend that gap beyond what is reasonable. If mistakes occur, the Company also suggests, the pilots have the means of obtaining a correction. It should be apparent that the facts of this given case establish that the misconduct of some pilots in padding Actual Flight Time was the key motivation for Management's going back to the actual words of Section 2.A, and this is more important in determining whether the Employer's

intent was ever amended in the clear language of Section 2.D by virtue of some claimed past practice, the Company argues.

Turning to the issue of notice, Section 26.Q.4 only applies in circumstances where the Company installs new technology to evaluate pilot performance, says this Employer. Not every piece of data coming off the aircraft is pilot performance data, and not every upgrade to ACARS constitutes "installation of any device, equipment, or system. . ." The Union's case in this regard is devoid of any evidence of a bargaining history that would suggest otherwise, Management asserts. The only evidence addressing the issue is the claim by the Union's grievance chair that the Company at some point settled a grievance by agreeing to meet with the Union's subject matter expert quarterly to review any proposed changes in technology. On the other hand, the Union's own MEC Chair, Captain Swindell, flatly admitted that the Union did not receive notice in March, 2012, when the Company implemented Version 7.5 in ACARS and did not grieve the fact that it did not. That is of crucial significance as regards the invalidity of the Union's notice contentions, as Management sees it.

Nor was the Company obligated to bargain with the Union before implementing Version 7.6, the Company finally suggests. The RLA does not come into play here. There was no change in the Parties' Labor Agreement and there was no change to the pilots'

pay. More specifically, if pilots follow the proper check procedures and wait until pushback is imminent to release the brake, they will suffer no loss in pay as compared to the older ACARS programs. The system will continue to provide pay to pilots at no less than that called for in the Agreement, i.e. exactly according to Actual Flight Time as defined in the Agreement. Last, if pilots are wrongly shorted by the system, they have the option of submitting a wage correction form and getting relief. That is the proper course for redress, not this class grievance disputing a clear Management right to apply the language defining Actual Flight Time as written, the Employer concludes.

VII. DISCUSSION AND FINDINGS

Having reviewed the record, the Majority of this Board finds that the instant class grievance should be sustained in its entirety. We find from the whole of the record that the practice of marking the start of Actual Flight Time at the moment of DBB existed dating back to at least 1999, and likely for some time before then. Simply put, the Majority is not persuaded by Captain Frisch's testimony, which we interpret as evidencing nothing more than his reading of the contract language, nor by the Company's suggestion that its decision to program DBB into ACARS at its inception was sua sponte, wholly unrelated to the practices existing at the time. We cannot

determine from the record whether or not the practice dates back decades, as the Union suggests, although the record certainly suggests by a preponderance of the evidence that beginning pilot pay at the point of brake release may have been a long-standing and wide-spread practice in the airline industry.

This is so when the cumulative effect of the Union's witnesses testimony and the discussion of the course of conduct presented by both U.S. Airways and Spirit Airlines are considered, the Neutral Chair suggests. However, this Board also understands that in a case where the Party argues a position contrary to the clear and unambiguous language of the agreement, the burden to show that a past practice is used to modify, amend or even contradict a clear and unambiguous provision of the contract is extremely high. For those arbitrators who permit such an actual contract alteration or change, the underlying theory is that the Parties have a right to amend their contract during the contract term, unless the contract expressly prohibits amendments whether by conduct or words.

An example of the resistance to amendments by past practice is the discussion by Arbitrator Fred Witney in Clean Coverall Supply Co., 47 LA 272 (1996), who, at 277, made the point when he wrote:

> In the last analysis, the Union requests that the Arbitrator ignore clear-cut contractual language, the intent of the parties, and write a new provision into the Labor Agreement. As we all know, such conduct on the part of the Arbitrator would be indefensible. After all, the authority of an arbitrator is limited to the construction of contractual language as agreed to by the parties. He may not legislate new language, since to do so would usurp the role of the labor organization and employer.

See also, Michigan Dept. of Social Services, 82 LA 11 4, 116 (Fieger, 1983) and CFS Continental-Los Angeles, 83 LA 458, 461 (Sabo, 1984) ("The clear meaning and language of the Contract is subject to enforcement, even though the results are harsh and may be contrary to the general expectations of one of the Parties.")

Yet fundamental principles of contract interpretation include the concept that the agreement must be construed based on the instrument as a whole and not from a single word or phrase; see Riley Stoker Corp., 7 LA 764, 767 (Platt, 1947) and Great Atlantic & Pacific Tea Co., 70 LA 1003, 1006 (Horowitz, 1978); Hemlock Public Schools, 83 LA 474, 477 (Dobry, 1984) ("That intent is expressed in contractual language, and the disputed portions must be read in light of the entire agreement."); that the language of the agreement which is clear and unequivocal will not be given another meaning than that expressed, see CFS Continental-Los Angeles, 83 LA 458, 461 (Sabo, 1984) ("…the clear meaning and language of the Contract is subject to enforcement, even though the results are harsh and

may be contrary to the general expectations of one of the Parties."); and that words contained in the agreement are not to be interpreted in the general dictionary sense, but in a sense mutually agreed upon as evidenced by the entire agreement and its application to the subject matter being considered, see Fran Jom, Inc., 75 LA 97, 99 (Siegel, 1980).

Likewise, an interpretation which may nullify or render meaningless another part of the agreement should be avoided and an interpretation which gives a just and reasonable result should govern. See John Morrell & Co., 76 LA 101 7, 1022 (Nathan, 1981) and Fort Pitt Steel Casting Div., 76 LA 909, 911 (Sembower, 1981). See Indiana Bell Telephone Co., 88 LA 122, 124 (Feldman, 1986) and Michigan Department of Social Services, 88 LA 114, 116 (Fieger, 1983).

Most important, arbitrators recognize that they may not add to the language of the collective bargaining agreement. See e.g., Continental Oil Co., 69 LA 399, 404 (Wann, 1977) and Esso Standard Oil Co., 16 LA 73, 75 (McCoy, 1951). And it is clearly fundamental that an arbitrator, when interpreting the agreement before him, must attempt to glean from the context and language used the parties' intention had they considered the circumstances. See Philadelphia Orchestra Association, 46 LA 513 (Gill, 1966); Hillbro Newspaper Printing Co., 48 LA 1304 (Jones, 1957); and Wooster Sportswear Co., Inc., 46 LA 9 (H.

Dworkin, 1965). These precepts are the grounds for the decisions by each of the Boards in U.S. Airways and Spirit Airlines, the Majority recognizes.

Regardless, we believe that the key for purposes of this decision is the fact that the practice existed at the time this Agreement was negotiated and that it continues to be the practice today, in most instances, we find. The record suggests to us that the practice has been acknowledged and accepted by both parties, and is sufficiently long-standing, clear and consistent in its application, to make it enforceable as a general rule [see the Neutral Chairman's discussion of the issue in General Foods, 91 LA 1251 (Goldstein, 1988)].

The Supreme Court has declared that the "arbitration of labor disputes under collective bargaining agreements is part and parcel of the collective bargaining process itself." Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574, 578 (1960). It follows that in many instances the common intent of the parties is to conclude a valid contract and to leave the meaning of certain provisions to be determined by the arbitrator as disputes arise and are resolved. In short, the parties intend the agreement to mean what the arbitrator or a MEC Board ultimately says it means. Otherwise, under the general rule mentioned earlier, there might well be no contract at all.

In the instant case, the Majority of this Board finds both factual and legal reasons to depart from the results reached, respectively, by the Boards in Spirit Airlines, supra, and U.S. Airways, supra, based on the record evidence detailed above. First, the conclusions reached in those earlier cases rested in no small part on findings that the Employers were in each case changing existing practice in order to bring the protocol for starting pilot pay more in line with what each Board found to be the clear and unambiguous language of the parties' contract. That is, in each case, the Employer implemented a change in practice that was designed to effectuate the plain meaning of the pertinent language defining what was in those case referred to as "block-to-block" time.

As the Majority sees it, the Company here, in contrast, did not design Version 7.6 of ACARS with a protocol that is in keeping with the strict language of Section 2.A. To the contrary, the Company maintained the DBB-based reporting protocol, albeit hedged by a timer system that at the point of five minutes after DBB is marked shifts the cost of any delays in the pushback of aircraft from the Company to the pilots. In the vast majority of instances, the Company itself suggests, DBB remains the default point for marking the start of Actual Flight Time. We do not read the findings and conclusions of the earlier Boards as having addressed implementation of block-to-block in

the manner of the Company's actions here. That is the nub of this case, the Majority rules.

The Majority of this Board also disagrees with some of the reasoning of the Boards in the Spirit Airlines and U.S. Airways in reaching the results they did. We appreciate that the contractual language at issue in all three cases, whether it defines "block-to-block" times as in those earlier decisions or Actual Flight Time, as is at issue here, is facially clear and unambiguous. We however also cannot ignore the fact that it was negotiated at a time when, the record suggests, the parties lacked the ability to strictly enforce the terms of Section 2.A as written. It cannot be emphasized enough that the standards of contract interpretation used by arbitrators are designed to determine the intent of the parties in adopting certain language to express their rights and obligations.

Actual Flight Time in 2005 was not to be "taken back to the book" by the definition set out in Section 2.A, i.e., that the initial movement from the block would be measured by assessment of movement by GPS or ACARS. This is so, Management conceded, because such a measurement could not be done without an unacceptable margin of error. A reasonable person under these circumstances would not then have found Actual Flight Time to be at all clear without gap filling in 2005 or even 2012. The practice of using DBB to be the basis for a standard of Actual

Flight Time separated from block-to-block movement then was certainly at least continued partially as to the proper and controlling measure of the initiation of Flight Time until July, 2012, the Majority concludes. This observation suggests the answer to the issue of whether or not the reasoning contained in U.S. Airways and Spirit Airlines controls the merits of the current case. When Management placed the July, 2012 protocol into the ACARS software to measure pay from initial movement from the block only if the DBB measurement point to actual movement exceeded five minutes, this "default measure" was not implementing the supposedly clear language of Section 2.A, but instead was unilaterally modifying the parties' binding practice that triggered pilot pay from the DBB, the Majority rules.

The Neutral Chair also finds particularly apropos to the circumstances here the thoughts of Arbitrator Carlton Snow on the issue of interpreting labor agreements in a chapter in one authoritative treatise on labor arbitration principles. Arbitrator Snow of course emphasizes in his analysis that the basic tenet of contract interpretation is to ascertain the intent of the parties, based on all relevant evidence. See The Common Law of the Workplace: The Views of Arbitrators (NAA, Theodore J. St. Antoine, Ed., BNA Books, 2d Ed., 2005) §2.2 at pp. 71-72; see also, Professor Theodore J. St. Antoine's discussion in Labor Arbitration Conference 1996 (Labor

Arbitration Institute, Chicago Conference) at pp. 132-133, wherein Professor St. Antoine commented:

> Arthur Corbin, one of the most-often cited commentators on contract law, wrote: "Interpretation requires the weight of evidence, not its exclusion." He emphasized that it is wrong to think that the "express words are so 'plain and clear' that their meaning . . . must be determined solely by what is within 'the four corners' of the instrument." 3 A. Corbin, Contracts § 542A (1960). Thus, the arbitrator is left to deign the parties' intent from the contract, plus these sources,
>
> 1) Bargaining history (what previous contracts said)
> 2) Bargaining session notes and records
> 3) Testimony from bargaining session participants
> 4) Past practice
> 5) Industry custom
>
> The point at which arbitrators' views differ is over what must occur before the arbitrator will consider evidence under points 1 through 5. Some arbitrators hold that there must first be ambiguous language, and only after such a finding, should the arbitrator consider external evidence. On the other hand, there are as many arbitrators who will consider evidence under 1 through 5 even without proof that the language is unclear and ambiguous.

The point is that context and content may in the end reveal latent ambiguities within seemingly clear contract language. This Neutral believes that the Board is faced with just such a case. The problem for the Company's position is that the language on which it bases its entire case, specifically, the phrase in Section 2.A defining Actual Flight Time as beginning from "the time from the moment an aircraft moves from the blocks," has never translated well into practice, even today.

The phrase, it turns out, represented more fantasy than reality when it was negotiated. This is the context in which the practice of using DBB to mark the start of Actual Flight Time, and thereby pilot pay, arose and became a past practice, the Majority holds. At present, the DBB trigger point still controls, keeping the past practice and not the precise contract language controlling, the Majority again reiterates.

Finally, the Union is correct in saying that the practice of paying pilots beginning at DBB is not a gratuity, the Majority also believes. Under the circumstances at bar, the Majority does not find that the practice of using DBB is at odds with the language of the Agreement or that its enforceability depends on our findings that the parties intended the practice to amend or "override" Section 2.A's language. At the very least, the Neutral concludes that this practice, unlike those invoked in Spirit Airlines and U.S. Airways, is not in conflict with the provisions of the Parties' instant Labor Agreement dealing with pilot compensation because those "clear definitional terms" are not being applied in the ACARS program analysis implemented in July, 2012. Movement is still not the measure for Flight Time pay; DBB is, we hold.

We further note the following comments from the editors of Elkouri & Elkouri, How Arbitration Works, 7th Ed. (2012), at pp. 12-16:

> Consider first a practice which is, apart from any basis in the agreement, an enforceable condition of employment on the theory that the agreement subsumes the continuance of existing conditions. Such a practice cannot be unilaterally changed during the life of the agreement. For if a practice is not discussed during negotiations most of us are likely to infer that the agreement was executed on the assumption that the practice would remain in effect. The inference is based largely on the parties' acquiescence in the practice. If either side should, during the negotiation of a later agreement, object to the continuance of this practice, it could not be inferred from the signing of the new agreement that the parties intended the practice to remain in force. Without their acquiescence, the practice would no longer be a binding condition of employment. In the face of a timely repudiation of a practice by one party, the other party must have the practice written into the agreement if it is to continue to be binding.

Examples are easily found of arbitrators applying this principle. See, Armstrong World Industries, Inc., 91 LA 1028 (Weston, 1988)(Employer changed practice of paying overtime rate to employees working in lower-rated jobs based on their regular hourly rate); Standard Oil Co., 79 LA 1333 (Feldman, 1982)(Employer changed practice of paying employees passed over for call outs for time missed).

It is instructive that in the two cases just cited, the practice at issue provided rights or benefits to the employees that exceeded what was granted in corresponding language within the parties' labor agreement. That may or may not be the circumstance established on this record. The claimed discipline motive lurks in the background in the case at bar. We believe,

however, that, at minimum, the Company acted prematurely in implementing its changes to the existing practice midterm, before the parties reached agreement on a new contract.

The Majority of this Board additionally does not view the changes in technology, which may or may not now allow the Company to accurately measure aircraft movement, as being truly material. Nothing in the language of Section 2.A, or its structure, suggests to the Majority of this Board that the parties intended to refer in Section 2.A to movement of an aircraft from the blocks as the situation where initial pilot pay is triggered when ACARS was introduced in 2005. The earlier DBB trigger continued. The Company simply is not free to then change practices and protocols for starting pilot pay other than to exclusively tie Flight Time to the actual movement from the blocks measure or standard contained in Section 2.A's definition. Regardless of any changed circumstances that may have made the strict language of Section 2.A closer to being the actual standard, the Company was required to either "go to the book" as an actual movement measure or first negotiate to eliminate or modify the parties' existing practices in starting pilot pay at DBB before implementing that new technology, we rule.

In light of our ruling we will not address the Union's claims raised under Section 26.Q.4 of the Agreement and the RLA,

both of which we believe are unnecessary to a decision on the merits in the case at bar.

VIII. AWARD

Based on all the foregoing findings and incorporated herein as fully rewritten, the majority of this Board finds that the Union has established a violation of applicable provisions in the parties' Collective Bargaining Agreement. Accordingly, we order the Company to immediately cease and desist from utilizing Version 7.6 of ACARS to the extent that it impacts the past practice of using DBB to mark the start of Actual Flight Time for purposes of pilot compensation. We also order the Company to make whole those employees whose pay has been adversely affected by the July 20, 2012 implementation of Version 7.6.

IT IS SO ORDERED.

Date: _____ Signed:_____
Elliott H. Goldstein
Chair

Date: _____ Signed:_____
Matthew Hintze
Company Member
(concur) (dissent)

Date: _____ Signed:_____
Reed Donoghue
Union Member
(concur) (dissent)