

*In the Matter of the
Seniority Integration Process Involving*

Fleet Service, Passenger Service, and Stores
Employees of Pre-merger United Airlines,
Mileage Plus, Continental Airlines, and
Continental Micronesia

Represented by:
International Association of Machinists and
Aerospace Workers, District Lodge 141

**NEUTRAL'S REPORT AND RECOMMENDATIONS
TO THE INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS, AFL-CIO
REGARDING SENIORITY INTEGRATION**

Issued by:

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November 6, 2013

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INTRODUCTION

The undersigned Neutral was appointed by agreement between United Continental Holdings, Inc. and the International Association of Machinists and Aerospace Workers (“IAM”) to make a Report and Recommendations to the IAM to resolve all seniority integration issues affecting the Fleet Service, Passenger Service, and Storekeepers employees of pre-merger United Airlines, Mileage Plus, Continental Airlines, and Continental Micronesia, who are represented by the IAM pursuant to the Railway Labor Act.¹ That agreement further provides, pursuant to the federal McCaskill-Bond statute governing seniority integration in airline mergers, that because a single union, in this case the IAM, represents the employee groups at all the pre-merger carriers, the IAM’s internal seniority integration policy shall govern the integration of seniority lists. Accordingly, the following Report and Recommendations are intended to be, to the fullest extent possible, consistent with the IAM’s longstanding and unbroken seniority integration policy of creating combined seniority lists by honoring the date an employee first entered their job classification at the pre-merger carriers for bidding purposes. Further, in accordance with the recently executed Joint Collective Bargaining

¹ I served as Chairman and Member of the National Mediation Board from 1998-2003. While serving as an arbitrator, I have been appointed by several Presidents of the United States to serve on Presidential Emergency Boards formed pursuant to the Railway Labor Act. I serve on arbitration panels of the American Arbitration Association, the Federal Mediation and Conciliatory Service, and numerous airline and non-airline permanent arbitration panels. I have also been an adjunct professor of Labor Arbitration and Alternative Dispute Resolution at the Georgetown University Law Center.

Agreements, I have used dates of hire at the pre-merger carriers to create combined seniority lists for furlough/recall and vacation purposes.

This Report and the proposed seniority lists to be published by November 11, 2013, represent the product of a lengthy and painstakingly detailed process. First, IAM-represented members were encouraged to submit to me any comments or concerns related to the seniority integration process by April 1, 2013 and more than 1,000 comments from both former United and Continental employees were filed, docketed, and considered in making this Report. In addition, an extensive mediation and fact-finding session to identify seniority issues and concerns was conducted both in person for two days in Washington, D.C. and by teleconference when necessary to receive input from employees representing the pre-merger groups. The relevant seniority integration arbitral precedent and case law were also reviewed and considered, as well as a Consent Decree entered by the United States District Court for the Northern District of Illinois. In formulating the seniority lists, the seniority data and employee information provided by the Company was reviewed and relied upon by the undersigned, based upon the Company's assurances of accuracy. Moreover, employees will have a further 30-day opportunity to protest their placement on the lists following publication of the IAM seniority lists on November 11, 2013. Through this process, I believe that a fair and equitable seniority integration will be achieved consistent with the IAM's internal policies.

FACTUAL BACKGROUND

In addressing the various seniority integration issues presented by the merger of these legacy carriers, it is important to understand the surrounding historical and legal context which affects the current employment and seniority rights of the more than 30,000 IAM-represented employees involved in these proceedings.

1. Pre-Merger History and Operations of United and Continental

United Airlines traces its corporate history back to 1926, when it began operations as an air mail carrier. In the post-World War II period, United became one of the largest and most prominent airlines in the United States. In 1961, United merged with Capital Airlines to create the largest domestic carrier at the time. United continued its expansion with the purchase of Pan Am's entire Pacific Division in 1985. However, in the early 1990s, United suffered significant losses and in 1994 the company agreed with its employees, including those represented by the IAM, to form an Employee Stock Ownership Plan ("ESOP"). Through the ESOP, employees obtained a 55% ownership stake in the company in exchange for deep contract concessions. In 1997, United became one of four founding members of the Star Alliance, the first global airline alliance. But in the wake of the September 11, 2001 terrorist attacks, United again faced heavy losses and was forced to file for Chapter 11 bankruptcy in 2002. After two rounds of Section 1113 labor concessions, the carrier emerged from bankruptcy in 2005.

Throughout its long history, Continental has also enjoyed a prominent position in the aviation industry. Continental began operations in 1934, as both an air mail and passenger service provider in the southwest. In the 1960s, Continental transformed itself

from a regional airline into a long-haul carrier and continued to expand its operations in the following decades. In 1968, Continental formed Air Micronesia, which later became Continental Micronesia, as a subsidiary to operate flights to and among Pacific island destinations. Following the deregulation of the airline industry, Frank Lorenzo took over the company in 1981 and shortly thereafter merged the Company with Texas International and relocated company headquarters to Houston, while maintaining the Continental identity. From 1983 through 1986, Continental reorganized in bankruptcy with deep cuts in wages and benefits which resulted in significant labor unrest. In 1990, Lorenzo departed Continental and the company again filed for Chapter 11 protection. Continental emerged in 1993 under new leadership and entered an era of improved financial performance and steady expansion of its International operations.

2. The United/Continental Merger

United and Continental engaged in unsuccessful merger discussions at various points from 2006 through 2008. However, in 2008, Continental withdrew from the SkyTeam alliance (which included Delta Air Lines and Northwest Airlines as principal members) and joined United as a member of the Star Alliance. Continental's entry into the Star Alliance initiated a cooperative relationship between the two carriers, which included extensive code-sharing.

United and Continental resumed merger talks in April 2010. On May 2, 2010, after just two weeks of negotiations, the companies announced that they had reached an agreement to combine ("Merger Agreement"), with United acquiring Continental through an all-stock deal valued at \$3 billion. The combined carrier would retain the United

name and continue to be headquartered in Chicago, but Continental's logo and livery were maintained. Continental's Chief Executive Officer was tapped to head the new company as President and CEO.

At the time of the merger announcement, United (then a wholly owned subsidiary of UAL Corporation) and its United Express affiliates operated approximately 3,500 flights per day to 235 destinations. United had 46,000 employees worldwide. Continental operated 2,500 daily flights, including flights flown by its regional partners, to 280 destinations. Continental's employees totaled 40,000. The two carriers' combined operations would form the largest airline in the world.

The United States Department of Justice gave antitrust approval for the merger on August 27, 2010. On September 17, 2010, United's shareholders approved the merger transaction. As a result, the Merger Agreement became effective on October 1, 2010. UAL Corporation was renamed United Continental Holdings, Inc. ("UCH"), and United and Continental both became wholly owned subsidiaries of UCH. Also on October 1, 2010, the carrier notified the National Mediation Board ("NMB" or "Board") that it had begun implementation of its Merger Agreement.

In October 2010, the Federal Aviation Administration ("FAA") approved a transition plan for United and Continental to move to a single operating certificate. The FAA ultimately issued a single operating certificate to the merged carrier on November 30, 2011.

3. Pre-Merger Union Representation

As is often the case in airline mergers, the historical patterns of union representation at United and Continental varied. Prior to the merger, different unions represented the same crafts at each carrier and several employee groups were unrepresented. The pre-merger representation for Fleet Service, Passenger Service, and Stock Clerks (also known as Storekeepers) was as follows.

Fleet Service Employees. The IAM was the certified representative for United's Fleet Service employees craft or class. *United Airlines, Inc.*, 6 NMB 536 (1978) (NMB Case No. R-4761). In 2010, Continental's Fleet Service Employees became unionized for the first time and were represented by the International Brotherhood of Teamsters ("IBT"). *Continental Airlines, Inc.*, 37 NMB 126 (2010) (NMB Case No. R-7228). The IBT also represented Fleet Service employees at Continental Micronesia as part of a combined Fleet and Passenger Service employees craft or class at that carrier. *Continental Micronesia, Inc.*, 22 NMB 189 (1995) (NMB Case No. R-5340).

Passenger Service Employees. The pre-merger craft or class of Passenger Service employees at United was represented by the IAM. *United Airlines, Inc.*, 25 NMB 411 (1998) (NMB Case No. R-6595). The IAM was also voluntarily recognized as the representative of employees at United's subsidiary Mileage Plus, Inc., who perform work within the scope of the Passenger Service craft or class. Passenger Service employees at Continental were unrepresented prior to the merger. At Continental Micronesia, Passenger Service employees were part of the combined Fleet and Passenger Service

employees craft or class represented by the IBT. *Continental Micronesia, Inc.*, 22 NMB 189 (1995) (Case No. R-5340).

Stock Clerks. The IAM was the certified representative for Stock Clerks at pre-merger United. *United Airlines, Inc.*, 6 NMB 548 (1978) (NMB Case No. R-4844). Prior to the merger, Continental's Stock and Stores employees, known as Material Specialists, were unrepresented. Employees of Continental Micronesia who performed stock clerk/stores functions were covered by the Mechanics and Related Employees collective bargaining agreement between Continental Micronesia and the IBT. *See United Air Lines & Continental Airlines*, 38 NMB 249, 250 (2011).

4. The NMB's Single-Carrier Proceedings

Pursuant to its authority under the Railway Labor Act ("RLA"), the NMB has developed procedures to decide union representation issues raised as a result of corporate mergers or consolidations. The Board's procedures are commonly known as single-carrier proceedings, in which the NMB determines whether the merging carriers have sufficiently integrated their operations, financial control, and labor and personnel functions to be considered a single transportation system for the purposes of union representation. *See* NMB Representation Manual, § 19.5. The NMB conducts its single-carrier proceedings on a craft-by-craft basis.

If the NMB determines that a merger has resulted in the formation of a single transportation system for a particular craft, the Board will proceed to determine how the merger impacts existing representation certifications previously issued by the Board. Where a work group at one of the merging carriers is substantially larger than its

counterpart at the other carrier, usually comprising more than 65 percent of the total number of employees in the craft, the Board's practice has been to extend the existing certification for the larger work group to the entire craft. Similarly, if the substantially larger group is unrepresented, the Board will extinguish the certification of the smaller work group and these employees will be unrepresented. *See, e.g., Continental Airlines/Continental Express*, 20 NMB 582 (1993). However, where the work groups are comparable in size and are not represented by the same union, the Board's practice has been to decide representation through an election, with the incumbent union or unions appearing on the ballot. *Northwest Airlines/Delta Air Lines*, 37 NMB 368 (2010). This is what generally occurred in the case of the United and Continental merger.

Fleet Service Employees. On January 19, 2011, the IAM filed an application initiating single carrier proceedings for Fleet Service employees at United, Continental, and Continental Micronesia. On April 28, 2011, the NMB ruled that all three carriers were operating as a single transportation system for representation purposes. *United Air Lines/Continental Airlines*, 38 NMB 185 (2011). The Board's representation investigation established that there were 6,862 Fleet Service employees at United and 7,443 Fleet Service employees at Continental and Continental Micronesia. Finding the two groups comparable in size, the Board consistent with its precedent ordered an election in which the IAM and IBT appeared on the ballot. *United Air Lines/Continental Airlines*, 38 NMB 217 (2011). The IAM prevailed in the election and on August 12, 2011 was certified by the NMB to serve as the exclusive representative of the post-

merger Fleet Service craft or class. *United Air Lines/Continental Airlines*, 38 NMB 285 (2011) (NMB Case No. R-7286).

Passenger Service Employees. On September 20, 2011, the IAM filed a single-carrier application with the NMB covering the craft or class of Passenger Service employees at United, Mileage Plus, Continental, and Continental Micronesia. On December 12, 2011, the NMB determined that these four entities comprise a single transportation system for representation purposes. *United Airlines and Continental Airlines*, 39 NMB 229 (2011). On December 29, 2011, the NMB issued a determination finding that the craft or class of approximately 8,771 Passenger Service employees at United and 69 at Mileage Plus was of comparable size to the 7,430 Passenger Service employees at Continental, together with the 552 at Continental Micronesia. Accordingly, the Board ordered a representation election. Although the IBT represented Passenger Service employees at pre-merger Continental Micronesia, the union did not meet the NMB's required showing of interest (then 35 percent of the combined group) needed in order to appear on the ballot.² *United Air Lines*, 39 NMB 263 (2011). The IAM prevailed in the election against the "no union" ballot option and became the certified representative of the craft or class of Passenger Service Employees on the combined system. *United Airlines*, 39 NMB 294 (2012) (NMB Case No. R-7313).

² Amendments to the RLA enacted by Congress in 2012 introduced a new showing of interest requirement of 50 percent in support of an application for NMB certification. 45 U.S.C. § 152, Twelfth. The NMB has now ruled that this new 50 percent requirement will apply to the Board's single-carrier proceedings in the future. 77 Fed. Reg. 75543 (Dec. 21, 2012). However, at the time of the single carrier applications filed by the IAM in this matter, the showing of interest requirement was only 35 percent.

Stock Clerks. On January 21, 2011, the IAM filed an application with the NMB initiating single-carrier proceedings for the craft or class of Stock Clerks. On April 20, 2011, the NMB found that United, Continental, and Continental Micronesia operated as a single transportation system for the craft or class of Stock Clerks. On July 1, 2011, the Board found that because there were 786 Stock Clerk employees at United and only 249 in total at Continental and Continental Micronesia, the sizes of the pre-merger work groups were not comparable. Therefore, the Board extended the IAM's existing certification to cover the entire Stock Clerks craft or class on the new combined system. *United Air Lines/Continental Airlines*, 38 NMB 249 (2011) (NMB Case No. R-7285).

5. Pre-Merger and Post-Merger Use of Seniority

Prior to the merger, the accrual and retention of seniority at United was handled differently than at Continental. In addition, the rules at each carrier regarding seniority varied among the different employee groups. In the recently ratified Joint Collective Bargaining Agreements ("Joint CBAs"), these differences in seniority use and accrual are largely eliminated and going forward a consistent set of rules will apply to all covered employees.

a. Pre-merger United and Mileage Plus Seniority

Fleet Service and Storekeepers. Pre-merger Fleet Service and Storekeeper employees at United were covered under the IAM-United Ramp and Stores Agreement. Under this Agreement, bidding for all purposes, except vacation, and pay was determined according to "Classification Seniority," which generally started the first day worked in one of the classifications covered under the Agreement, including training time. For

Fleet Service employees these classifications included Ramp Serviceman, Lead Ramp Serviceman, and Vehicle Driver. For Storekeepers, these classifications included the basic Storekeeper position and the Lead Storekeeper position. Prior to 2003, part-time Ramp and Stores employees did not accrue seniority. In 2003, part-time employees were given Classification Seniority for the first time and were added to the seniority lists and given a May 1, 2003 seniority date.

As a result of a discrimination lawsuit filed against United and its five unions by the federal government, the District Court for the Northern District of Illinois entered a Consent Decree dated April 30, 1976, which was amended on March 3, 1995. The Consent Decree requires that employees covered under the Ramp and Stores Agreement hired by the Company after July 2, 1965 were to be laid off and recalled according to their “Company Seniority” date, defined as the date an employee was first hired by the company (as adjusted for personal and education leaves over 90 days).³ This date was also adjusted for time spent in management over six months. The resulting date became

³ The Consent Decree was reached as the result of a lawsuit filed against United and five unions representing United employees alleging that the company and these unions had negotiated contract terms which discriminated against women and certain minorities. Under the Consent Decree, which was incorporated into all of the relevant collective bargaining agreements, United and the unions agreed to, among other things, make certain seniority adjustments and policy changes to remedy the allegedly discriminatory practices. As is relevant here, the court found that it would be unfair to use Classification Seniority for furlough and recall when women and minorities had been discriminated against in obtaining or maintaining certain positions. Accordingly, since 1976, in accordance with the Consent Decree, essentially Company Seniority as adjusted has been used for furlough/recall purposes for employees hired after July 2, 1965. *See EEOC v. United Air Lines, Inc.*, No. 73 C 972, 1995 WL 103653 (N.D. Ill. Mar. 3, 1995).

known as the United employee's "Consent Decree" date. While used for furlough and recall, the Consent Decree date was not used for vacation accrual and vacation bidding which was done according to a Company Seniority date. As a practical matter, for nearly all Ramp and Stores employees the Company Seniority Date and their Consent Decree Date are now identical.

Under the Ramp and Stores Agreement, United employees transferring to a different classification represented by the IAM continued to accrue Classification Seniority for two years. However, if they did not return to the classification within the two-year period, they would lose their Classification Seniority. Leads under this Agreement were considered a separate classification, although the employee's basic classification seniority would continue to accrue during time worked as a Lead.

Employees promoted to supervisor or another non-represented position generally only continued to accrue Classification Seniority for six months, after which time they would retain but no longer accrue Classification Seniority. Furloughed employees under the Agreement could remain on the furlough list indefinitely and would continue to accrue both their Classification and Company Seniority.

Passenger Service. Passenger Service employees, known as Public Contact Employees ("PCEs") at pre-merger United and Mileage Plus, were represented by the IAM. Under both the IAM-United Public Contact Employees Agreement and the IAM-Mileage Plus Public Contact Employees Agreement, bidding for all purposes was governed by "PCE Seniority," which was generally established upon entering any one of the classifications covered under the Agreements and continued even if the employee

moved to another classification under their Agreement.⁴ For purposes of PCE Seniority, employees' training time was included. The PCE group at United included 21 different classifications, while the PCE group at Mileage Plus only included the basic Customer Representative position and the Lead position, known as Service Director.⁵ Furloughs and recall, however, were governed by Company Seniority date, as adjusted for personal and education leaves over 90 days.⁶ Seniority was not affected by time spent as a Service Director under either Agreement.

Under both Agreements, United employees transferring to a different IAM-represented classification outside of the PCE group continued to accrue PCE Seniority for two years, but PCE Seniority would be lost if they did not return to a PCE position within the two-year period. A PCE employee promoted to supervisor or another non-

⁴ IAM was first elected to be the certified representative of Public Contact Employees at United in 1998 and on June 3, 1999, employees' Company Seniority dates became their PCE Seniority date. Accordingly, all but a small percentage of this group have a Company Seniority date that matches their PCE Seniority date.

⁵ The classifications at United covered under the Passenger Service Employees Agreement included: Service Director – Air Freight; Air Freight Representative; Service Director – Cargo Sales and Service; Cargo Sales and Services Representative; Services Director – Customer Service; Service Director – International Customer Service; Customer Service Representative; International Customer Service Representative; Valet Room Attendant; Customer Service Clerk; Services Director – Reservations; Reservations Sales and Services Representative; Services Director – Baggage Services Representative; Baggage Service Representative; Services Director – Ticket Sales; Ticket Sales Representative; Air Freight Operations Coordinator; Cargo Representative – Internal Support; Station Operations Representative; and Regional Key Account Representative.

⁶ Unlike United Fleet Service and Stores employees, the Company Seniority date for Public Contact Employees was not adjusted for time spent in a promoted status over six months.

represented position generally only continued to accrue PCE Seniority for six months, after which time they would retain but no longer accrue PCE Seniority. Furloughed PCEs at United could remain on the furlough list indefinitely, while at Mileage Plus they only maintained recall rights for six years. While on furlough, an employee's PCE Seniority and Company Seniority continued to accrue.

b. Pre-merger Continental Seniority

Fleet Service. Under the IBT-Continental Fleet Service Agreement, which first became effective in 2010, seniority for Fleet Service employees at Continental was determined by "Craft Seniority."⁷ Craft Seniority or the "Bid Date" was established on the first day the employee worked in any of the six classifications covered under the Agreement, including all training and orientation days.⁸ Craft Seniority or Bid Date was used for all bidding purposes, pay, as well as furlough and recall. Craft Seniority continued to accrue even if an employee transferred to a different classification or a Lead position covered under the Agreement.

If a Continental employee transferred outside of the Fleet Service craft, Craft Seniority was retained but did not continue to accrue. Employees voluntarily promoted to a management or administrative position within the Fleet Service Department below

⁷ Prior to 2010, this group was unrepresented and was covered by Continental's Fly to Win Handbook.

⁸ These classifications included Customer Service Agent; Cargo Agent/Cargo Sales Agent; Hub Operations Coordinator/Ops Coordinator; Aircraft Appearance Coordinator; Move Team; and Lead Agent/Team Leader. Prior to 2010, under the Fly to Win Handbook, training time was not included in seniority accruals.

the Director level continued to accrue Craft Seniority while in promoted status. However, employees promoted to any other position lost their Craft Seniority.

Continental Fleet Service employees on the furlough list only maintained recall rights for the lesser of six years or the employee's length of service. Fleet Service employees would continue to accrue Craft Seniority while on furlough.

Continental also maintained an "Adjusted Hire Date" for each Fleet Service employee. The Adjusted Hire Date generally consists of the employee's hire date with the company as adjusted for periods on furlough or extended leaves of absence. The company used the Adjusted Hire Date to determine benefits, but this date was not used for bidding purposes or furlough/recall. Continental also maintained records showing the employee's "Hire Date," reflecting the first day of an employee's current employment after the completion of training.⁹ For most Continental Fleet Service employees, their Hire Date is the same or earlier than their Adjusted Service Date or their Bid Date, as would be expected. But in the case of a few hundred employees their Adjusted Service Date and/or their Bid Date is, in fact, earlier than the Hire Date given in the company records. This anomaly appears to be the result of Continental having credited these employees for at least some seniority purposes with time accrued at a corporate

⁹ Continental's computerized employee records also include a date referred to as the "Original Hire Date." This date reflects the first day when an employee was hired by Continental for the first time. For the vast majority of Continental employees the Hire Date and Original Hire Date are identical. Only those employees who terminated from the company and were then rehired have a Hire Date different from the Original Hire Date.

subsidiary or affiliate of Continental. However, Continental treated their Hire Date as the first day these employees performed service for the mainline carrier.

Storekeeper. Storekeepers, known as “Material Specialists” at pre-merger Continental, were unrepresented prior to the NMB’s single carrier proceedings and therefore were considered “at will” employees whose terms and conditions of employment the company could change unilaterally. Although not covered by a binding and enforceable collective bargaining agreement, Continental did have a policy document known as the Stores Work Rules. Under the most recent version of the Stores Work Rules, effective October 1, 2011, employees were provided with “Craft Seniority” on the first day they began work in Stores. This date included training time and was used for all bidding purposes, with the exception of vacation bidding. It was also used for purposes of furlough and recall. Craft Seniority continued to accrue while an employee was on leave or furlough. Lead Material Specialists did not have a separate Lead seniority date.

In addition, under the Stores Work Rules, employees accrued “Company Seniority,” which was also referred to as their “Adjusted Seniority Date.” Company Seniority was used for determining certain benefits, vacation accrual, and vacation bidding. Company Seniority only accrued for the first 30 days of personal, education or emergency leave, or furlough. It also stopped accruing after 90 days of adoptive, parental, company offered leave and unpaid medical leaves. As with Fleet Service employees, Continental also maintained records of the “Hire Date” for Stores employees. There are approximately 40 Stores employees who have a Hire Date later than their

Adjusted Service Date and/or Bid Date as result of receiving seniority credit only for some purposes for time worked at a Continental subsidiary or affiliate.

Employees who were promoted to any management, administrative or other position continued to retain and accrue all forms of seniority under the Stores Work Rules.

Passenger Service. Passenger Service employees at pre-merger Continental were unrepresented, “at will” employees until the election of the IAM as their certified representative through the NMB’s single carrier proceeding. Continental did, however, have employee manuals which, although not binding contracts, explained Continental’s internal policies with regard to employee issues, including seniority. Under pre-merger Continental’s Fly to Win Handbook applicable to Airport Operations Agents and its Reservation Agent Handbook applicable to Reservation Agents, covered employees were afforded “Bid Seniority,” also referred to as the “Bid Date,” which governed all bidding. Bid Seniority generally started with the employee’s date of hire into the work group, not including the employee’s training time, which generally ranged from one to six weeks depending on the job position. Bid Seniority was also the “primary factor” in cases of furlough and recall, although the company retained discretion to recall on a basis other than seniority. Bid Seniority under both Handbooks continued to accrue for all time spent in management. Under the Fly to Win Handbook, Bid Seniority continued to accrue while on furlough, but under the Reservation Agent Handbook it only continued to accrue for the first 30 days on furlough.

In addition, under these Handbooks, Passenger Service employees accrued “Company Seniority,” also referred to as the “Adjusted Service Date.” However, the Adjusted Service Date was only used for determining benefits. This was the date when the employee was first hired at Continental, as adjusted for company-offered leaves of absence, family/medical leave, or unpaid medical leave longer than 90 days. During education leaves or personal leaves of absences, Company Seniority also stopped accruing after 30 days. Company Seniority for furloughed employees stopped accruing after 90 days under the Fly to Win Handbook and after 30 days under the Reservation Agent Handbook. In addition, Continental also maintained records of the Hire Date for Passenger Service employees. In the case of a few hundred Passenger Service employees who received credit for working for a Continental subsidiary or affiliate, their Bid Dates are earlier than their Hire Date or Adjusted Service Date.

Under both Handbooks, management, administrative employees and certain members of other non-represented groups could transfer into Airport Operations Agent or Reservation Agent positions without any loss of seniority. However, employees transferring from groups covered by a collective bargaining agreement into one of the Agent positions were only credited with Company Seniority, not their Bid Seniority.

Inactive Airport Operations Agents remained on the furlough list for the lesser of six years or their length of service, while Reservation Agents remained on the furlough list for five years.

c. Pre-merger Continental Micronesia Seniority

Fleet Service and Passenger Service. At Continental Micronesia, pre-merger Fleet Service and Passenger Service employees were in a combined craft or class covered by the IBT-Continental Micronesia Fleet and Passenger Service Agreement. Under that Agreement, an employee's "Bid Seniority" date governed for all bidding purposes, as well as pay, and furlough/recall. Bid Seniority started on the first day an employee worked in any job position covered under the agreement, whether in Fleet or Passenger Service. Generally, employees lost Bid Seniority if they accepted a position outside of the Agreement. Employees promoted to permanent supervisors retained Bid Seniority for a period of 180 days after transfer, after which time it was also forfeited. An employee who was temporarily assigned to a supervisory position or was assigned to a special assignment would continue to retain and accrue Bid Seniority during this assignment for a period of 90-180 days, depending on the assignment.

These employees also had an "Adjusted Service Date," which was their company seniority date, as adjusted for furloughs and personal leaves of absences over 30 days and medical leaves over 90 days. Furloughed employees at Continental Micronesia remained on the furlough list for the greater of three years or the employee's length of service.

Storekeepers. At Continental Micronesia, Storekeepers, who were also known as Material Specialists, were represented by the Teamsters as part of the Mechanics and Related Crafts or Class. Under this Agreement, employees were assigned "Classification Seniority" dates, which started the first day worked in a classification covered under the Agreement, including training time, and continued to accrue while working in any other

position covered by the Agreement. This Classification Seniority was used for all bidding purposes, as well as furlough/recall. Employees promoted to a permanent supervisory position or to a non-contract, non-maintenance position only maintained their Classification Seniority for 90 days, after which time it was lost. An employee's Classification Seniority was adjusted after 90 days for temporary work in management or special assignments. It was also adjusted for personal and educational leaves of absences and for company-offered leaves of absences after 90 days. It continued to accrue, however, during family/medical leaves of absences. Company Seniority stopped accruing after 90 days for company-offered and non-occupational injury leave as well as family/medical leaves. Furloughed Material Specialists only maintained recall rights for the greater of three years or the employee's length of service.

d. Seniority under the New Joint Collective Bargaining Agreements

On September 26, 2013, United and the IAM announced that they had reached Tentative Joint Collective Bargaining Agreements for the Fleet Service, Passenger Service and Storekeeper crafts or classes from all of the pre-merger carriers. The ratification vote for these Agreements was conducted on October 28, 2013 through in-person voting conducted at IAM Local Lodges in accordance with District Lodge 141's Bylaws. On October 29, the IAM announced that agreements cover all three IAM-represented groups had ratified by more than 70 percent of those voting.

For the most part, seniority is handled identically under all three new Agreements. Going forward, for competitive bidding purposes, employees will need to have two

seniority dates: (1) a “Bid Seniority Date,” and (2) a “Company Seniority Date.”¹⁰ The Bid Seniority Date is the date a new employee is placed on the Company’s payroll in a particular classification or the date a Company employee is notified that he or she has been awarded an open vacancy in a new classification. The Bid Seniority Date will be used for all types of bidding, except bidding for vacations. The Company Seniority Date is defined as the date when an employee is placed on the Company’s payroll, as adjusted for education and personal leaves of absences in excess of 90 days. Under the new Agreements, the Company Seniority Date will be used to determine seniority order for furlough and recall. When the Company Seniority Date is used for this purpose, it is referred to as “Furlough/Recall Seniority” under the Agreements. The Company Seniority Date will also be used for vacation bidding, and is referred to as “Vacation Seniority” when used for this purpose.

Under the new Agreements, employees transferring among IAM-represented classifications will retain and continue to accrue Bid Seniority for two years. Under the Fleet Service and Storekeeper Agreements, Leads continue to accrue Bid Seniority in both their basic classification and the separate Lead classification at their Location/Point. However, under the Passenger Service Agreement, Leads are not treated as a separate

¹⁰ The Agreements also provide that employees will have a “Pay Seniority Date.” The Pay Seniority Date is the date the employee becomes active in any position covered under the Agreement as adjusted for educational and personal leaves of absences in excess of 90 days and, for employees with less than 10 years of service, for periods on furlough in excess of 90 days. Pay Seniority is used for determining an employee’s pay. The Pay Seniority Date is not addressed in my Report and Recommendations because the seniority integration process only concerns the merging of seniority that is used for competitive bidding purposes and furlough/recall purposes.

classification for seniority purposes and instead Leads are simply identified as a separate position within their work classification.¹¹

If an employee is promoted to a management position within their division below the Director level, they retain and accrue Bid Seniority and Furlough/Recall Seniority for the first 183 days in the management position, after which time they can retain (but no longer accrue) seniority contingent upon continued payment of monthly administrative fees. All forms of seniority are lost, however, if an employee moves to a promoted position outside their division. Additionally, all forms of seniority are lost three months after an employee transfers to a position in a non-represented group. All types of seniority are adjusted for education or personal leaves of absences in excess of 90 days.

Under the Agreements, active and inactive employees as of November 1, 2013 have indefinite recall rights. Employees hired after November 1, 2013, however, only have recall rights for the length of their Furlough/Recall Seniority up to a maximum of six years. Additionally, employees hired after November 1, 2013 only accrue vacation seniority for the first 90 days of furlough.

The Agreements provide for the creation of Seniority Lists which are to be used for all bidding purposes. The Seniority Lists are to include employees' names, classifications, positions, Bid Seniority dates, Company Seniority dates and work status and are to be sorted according to Bid Seniority date. If two or more employees have the same Bid Seniority date such ties are to be broken in the first instance by Company

¹¹ For example, the Customer Service Classification includes the basic Customer Service representative position and the Lead Customer Service Representative position.

Seniority date.¹² The Agreements also provide for the creation of “Juniority Lists” which list employees in reverse seniority order according to an employee’s Company Seniority Date and is to be used for furlough/recall purposes, including bumping during furloughs. As was the practice under prior agreements and policies, the new Agreements do not allow employees who are on the furlough list to displace active employees. Juniority Lists are to include employees’ names, classifications, positions, Furlough/Recall Seniority dates, Bid Seniority dates, and work status and are to be sorted according to Furlough/Recall dates. Furlough/Recall date ties in the first instance are to be broken by Bid Seniority date.

For Fleet Service and Storekeeper employees, separate Lead Seniority and Juniority Lists will also be established. Bid Seniority ties on the Lead Seniority List are broken by basic Bid Seniority date and then by Company Seniority date. Ties in Furlough/Recall Seniority on the Juniority List are broken by Lead Bid Seniority and then basic Bid Seniority.¹³

¹² Each of the pre-merger agreements provided for different methods for resolving seniority list ties. For example, under the IAM Agreements applicable to United and Mileage Plus employees, ties were broken in the first instance by Company Seniority date. For IBT-represented employees at Continental and Continental Micronesia, ties were broken in the first instance by using the last four digits of the employees’ Social Security Numbers.

¹³ If ties still exist on any the Seniority Lists or Juniority Lists after applying the tie-breaking methods described above, these ties are broken by first giving preference to the employee with the lowest number comprised of the last four digits of their Social Security Number and then, if ties still exist, giving preference to the employee with the lowest number comprised of the month and day of their birth.

SENIORITY INTEGRATION PROCESS AND THE IAM'S INTERNAL SENIORITY INTEGRATION POLICY

1. McCaskill-Bond Seniority Integration Statute

On December 26, 2007, the Consolidated Appropriations Act of 2008 was signed into law. Pub. L. No. 110-161. Among the bill's provisions pertaining to the FAA was Section 117, which has come to be known as the "McCaskill-Bond" statute and establishes seniority protections in the context of airline mergers and consolidations. The legislation was originally introduced by two Missouri Senators, Claire McCaskill and Christopher "Kit" Bond, as a reaction to the harsh treatment of Trans World Airlines ("TWA") employees, following the acquisition of TWA's assets by American Airlines. The former TWA employees generally lost their TWA seniority and were placed at the bottom of merged seniority lists making them vulnerable to layoffs, which did occur.

The McCaskill-Bond statute requires that employee seniority lists be integrated in a fair and equitable manner whenever the assets or equity of an air carrier are transferred to or combined with another, and two separate crafts or classes are combined under the Railway Labor Act. 49 U.S.C. § 42112, note § 117(a), (b). When a craft or class is represented by different unions or is unrepresented at one carrier, then the McCaskill-Bond statute requires the mediation/arbitration procedure first adopted by the former Civil Aeronautics Board in the Allegheny-Mohawk merger. However, when the same union represents the combined craft or class, then the McCaskill-Bond statute mandates that the "collective bargaining agent's internal policies regarding integration, if any, will

not be affected by and will supersede” the Allegheny-Mohawk procedures.¹⁴ 49 U.S.C. § 42112, note § 117(a)(1).

In this matter, the IAM represents all employees in the combined crafts or classes of Fleet Service, Passenger Service, and Stores at post-merger United, as determined through the NMB’s single-carrier proceedings. Accordingly, the IAM’s internal policy must be applied to integrate the seniority of these employees under the requirements of the McCaskill-Bond statute.

¹⁴ The McCaskill-Bond statute provides in relevant part:

(a) Labor integration. With respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act (45 U.S.C. 151 et seq.), sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers; except that--

- (1) if the same collective bargaining agent represents the combining crafts or classes at each of the covered air carriers, that collective bargaining agent's internal policies regarding integration, if any, will not be affected by and will supersede the requirements of this section; and
- (2) the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered air carrier shall not be affected by the requirements of this section as to the employees covered by that agreement, so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions.

49 U.S.C. § 42112, note § 117.

2. IAM's Internal Seniority Integration Policy

In seniority integrations, the IAM's long-established internal policy is to merge seniority according to date of hire. In those circumstances where bidding is based on the employee's date of entry into his or her work classification, the IAM's policy is to merge seniority lists according to entry dates. This method of combining seniority lists is sometimes referred to as "dovetailing," as opposed to "endtailing" where one group is simply added to the end of the seniority list of the other group. The IAM's method works as indicated in the following example.

Original seniority dates at the separate carriers:

<u>Carrier A</u>	<u>Classification Entry Date</u>	<u>Carrier B</u>	<u>Classification Entry Date</u>
Employee A-1	08/01/1982	Employee B-1	09/30/1980
Employee A-2	02/03/1983	Employee B-2	12/01/1992
Employee A-3	04/15/1999	Employee B-3	10/17/1993
Employee A-4	07/01/2011	Employee B-4	03/05/1995
Employee A-5	11/12/2012	Employee B-5	08/04/2011

Dovetailing results in the following merged list:

Employee B-1	09/30/1980
Employee A-1	08/01/1982
Employee A-2	02/03/1983
Employee B-2	12/01/1992
Employee B-3	10/17/1993
Employee B-4	03/05/1995
Employee A-3	04/15/1999
Employee A-4	07/01/2011
Employee B-5	08/04/2011
Employee A-5	11/12/2012

The IAM has consistently applied its internal policy in mergers where it was or became the certified representative of the same crafts at the two merging carriers. For example, the IAM has integrated seniority by date of hire and/or entry date in the following mergers: Southwest Airlines/AirTran Airways (passenger service); US Airways/America West (fleet service; mechanics and related; stock clerks); Trans World Airlines/Ozark Airlines (fleet service; mechanics and related); Northwest Airlines/Republic Airlines (fleet service; mechanics and related); US Airways/Piedmont Airlines (mechanics and related); US Airways/Pacific Southwest Airlines (mechanics and related); Piedmont Airlines/Empire Airlines. Thus, the IAM has consistently advocated and applied its seniority integration policy regardless of the details of the merger. The IAM has implemented seniority integrations based on date of hire and/or entry date whenever it has been in a position to legally require it.¹⁵

Courts, arbitration panels, and commentators have all acknowledged that the IAM adheres to an internal policy of seniority integration according to date of hire and/or entry date. *See Ramey v. IAM*, 2002 WL 32152292, *2 (E.D.N.Y. 2002) (“In combining workforces from two merging entities, IAM has generally insisted on the date of personnel’s entry into a job classification.”); *In re TWU Local 555 and IAM, District Lodge 142 and Southwest Airlines Co.*, at *14 (Ira Jaffe, Chair, June 4, 2012) (discussing IAM policy of date of hire dovetailing); Darin Lee & Ethan Singer, *Interpreting the*

¹⁵ Even in those cases where the IAM is not the surviving representative, the Union has adhered to its position that seniority should be integrated according to date of hire. Examples include the following mergers: Southwest Airlines/AirTran Airways (fleet service); Delta Air Lines/Northwest Airlines (clerical, office, fleet and passenger service); American Airlines/Trans World Airlines (mechanics and related).

“Fair and Equitable” Standard in Labor Force Seniority Integration, at 8 n.14 (Nov. 21, 2011) (“Date of hire is the defined merger polic[y] of ... the International Association of Machinists and Aerospace Workers”).

3. Seniority Integration Process

On January 25, 2013, the IAM and United entered into a Letter Agreement regarding the seniority integration process for IAM-represented employees in the Fleet Service, Passenger Service, and Storekeeper crafts or classes. In the Letter Agreement, the parties acknowledge that pursuant to the McCaskill-Bond statute the IAM’s internal policy applies to this seniority integration. The Letter Agreement also provided that:

1. Any integrated seniority list must comply with the Final Amended Consent Decree issued on March 2, 1995 in Case No. 73-C-972 by the U.S. District Court for the Northern District of Illinois.
2. The integrated seniority lists shall be applied only prospectively, and no employee shall be entitled to exercise seniority on the integrated lists except with regard to future bids and vacancies.
3. Any integrated seniority list shall not contain any other conditions or restrictions that materially increase the Company’s costs associated with training, transfers or Company-paid moves.
4. No employee may claim an entitlement to seniority rights of any type under any integrated seniority list, or to compensation or other benefits in lieu of such seniority rights, prior to implementation of any integrated seniority list.

The parties further agreed “to appoint Joshua Javits as a Neutral to mediate and to make recommendations to the IAM to resolve all issues consistent with IAM integration policy.” The Letter Agreement also provides for the retention of the law firm of Guerrieri, Clayman, Bartos & Parcelli, P.C., as counsel to the IAM, to facilitate the

seniority integration process. In the Letter Agreement, the IAM originally committed to produce integrated seniority lists with my assistance by April 15, 2013, contingent upon the ratification of Joint Collective Bargaining Agreements during the ratification voting held in March 2013.

However, because new agreements were not ratified in March 2013, United and the IAM entered into a Supplemental Letter Agreement dated October 14, 2013 to revise the original time-table for this seniority integration process. Under the Supplemental Agreement, integrated seniority lists will issue on November 11, 2013, and I will resolve any protests from affected individuals regarding their placement on the lists no later than January 15, 2014.

As part of the original Letter Agreement, United committed to provide all information and employment data necessary for the compilation of integrated lists. At the outset of the seniority integration process, IAM counsel requested that the Company provide for my review all the background information needed to produce integrated lists, including seniority lists currently maintained at United, Mileage Plus, Continental, and Continental Micronesia. United provided updated lists in October 2013.

In order to accomplish the integration of lists, District Lodge 141 also formed two seniority integration committees. The first committee, headed by General Chair Richard Chu, was tasked with assisting me in identifying seniority integration issues of significance to pre-merger United and Mileage Plus employees. The second committee, headed by General Chair Ray Wallis, was charged to do the same on behalf of pre-merger Continental and Continental Micronesia employees.

On March 20-22, 2013, I held a fact-finding and mediation session with the two committees in Washington, DC. General Chair Chu and General Chair Wallis were present to speak for the interests of their respective groups. In addition, the following representatives, who were selected based on their familiarity with the issues on the ground, were present during this session to provide information regarding current seniority practices and voice concerns from their respective groups:

From pre-merger Continental:

Sam Arnold – Lead Customer Service Agent/Cleveland
Bob Bennett – Customer Service Agent/Boston
Sabena Lewis – Airport Sales Agent/Newark
Patrick Rossiter – Cargo Sales Agent/Houston

From pre-merger United:

Barbara Martin – Service Director – Customer Service/Dulles
Mike “Mac” McGovern – Ramp Lead/Newark
Rich Pascarella - Ramp/Dulles

Also present from the Union was Airline Coordinator Ira Levy and counsel from the Guerrieri, Clayman, Bartos & Parcelli law firm. Representatives from groups not present on the first day of the mediation session participated in a teleconference on the second day so that I could also discuss with them the integration process and listen to their particular concerns as well. These individuals included: Joe Bartz, Storekeeper (pre-merger United)/Chicago; Kevin Davis, Material Specialist (pre-merger Continental)/Houston; Max Green, Reservation Agent (pre-merger Continental)/Salt Lake City; and, Laura Stone, Reservation Agent (pre-merger United)/Chicago.

The fact-finding and mediation session began with introductions and explanations about general principles of seniority integration, the history of the McCaskill-Bond statute, the IAM's seniority integration policy, as well as the integration process and timeline adopted by the Union and United and my role in it. I also explained the fact-finding nature of the mediation session designed to identify all the potential issues for each group raised in the integration process. I further advised that I would not be issuing any decisions or final determinations during the fact-finding and mediation session.

During the session, the group identified several issues raised in the seniority integration process, including:

- General concerns of employees on both sides of the merger about losing their existing seniority time.
- Past differences generally in seniority use, accrual and retention between the various employee groups at the merging carriers.
- That part-time employees at pre-merger United did not accrue seniority prior to 2003, while there was never a distinction between full-time and part-time employees for seniority purposes at pre-merger Continental.
- That seniority did not begin accrue for the majority of employees at pre-merger Continental until after the completion of training, while this time was included at pre-merger United.
- That Company Seniority time was adjusted at pre-merger Continental after 30-90 days for periods on furlough and medical leaves, while similar adjustments were not made at pre-merger United.
- That seniority was adjusted for employees at pre-merger United for time spent in management over six months, while employees at pre-merger Continental generally continued to accrue seniority for time spent in management.

- Differences in how seniority accrued for Lead Ramp and Stores employees at pre-merger United and Continental and how these systems might be fairly integrated.
- Pending seniority-related grievances, particularly grievances filed with the IBT in 2010 when they were elected to represent Fleet Service employees at Continental, but which were never progressed to arbitration.

In addition to meeting with the two committees during this session, I also posted on the District 141 website an invitation to all interested members to submit written comments or concerns to me regarding the seniority integration by April 1, 2013. In total, over 1,000 members submitted comments, approximately 40% of the comments were from pre-merger United employees and 60% of the comments were from pre-merger Continental employees.¹⁶ The comments generally reflected the same concerns raised during the mediation session with the respective groups, particularly differences in how seniority was handled in the past between the two pre-merger employee groups.

In addition, approximately 125 commenters requested personal adjustments to restore seniority that was lost, in some cases decades ago, under the agreements or policies applicable at that time. Many of these employees are from previously unrepresented groups at pre-merger Continental and seek seniority adjustments for time when they were not working under a contract and did not have a formal grievance mechanism. Additionally, a number of employees submitted questions inquiring about the seniority integration process generally and how the integrated lists will be

¹⁶ Included in these submissions were 423 identical form letters from pre-merger Continental Fleet Service employees explaining that they used craft seniority in the past, not classification seniority, and therefore requesting seniority integration based upon their craft seniority dates.

implemented. The issues raised by members in their comments will be addressed in this Report and Recommendation.

The purpose of this Report and Recommendation is to make recommendations to the IAM as to how the Union's seniority integration policy should be applied to the unique facts and circumstances of this merger. In particular, I have sought to address the specific concerns presented to me by the two committees, as well as those raised through the comment process, and to propose a fair and equitable resolution of those issues. In addition, attached to this Report are integrated seniority lists produced in accordance with the findings and recommendations contained in this Report.

Following the issuance of this Report, integrated seniority lists for Fleet Service, Passenger Service, and Storekeeper employees will be published on November 11, 2013. Affected members will then be given an opportunity to file written protests regarding their placement on the integrated seniority lists. These individual protests must be submitted in writing by December 11, 2013. I will decide these protests no later than January 15, 2015.

DISCUSSION

1. General Principles of Seniority Integration

There are several well-settled principles of seniority integration which provide guidance in achieving a fair and equitable seniority integration. First, it must be acknowledged that seniority integration in the airline industry is a "zero-sum" endeavor, with one employee's seniority gain, being another employee's loss. *See generally Haerum v. Air Line Pilots Ass'n*, 892 F.2d 216 (2d Cir. 1989) (as part of seniority

integration pilot group wanted restoration of seniority lost during prior merger, but the court rejected this approach reasoning that to do so would “juggle the existing seniority ladder” and lead to “countervailing claims” from other pilots). Accordingly, “fair and equitable” seniority integration is generally viewed as attempting to avoid a “windfall” to any particular group. *See Transp. Workers Union of Am., Local 545 and 542*, at *4 (Richard I. Bloch, 2007) (rejecting seniority integration method that would provide a windfall to the younger workforce of one pre-merger carrier); *Pilots of Northwest Airlines and Pilots of Delta Air Lines*, (Richard I. Bloch, Chair, 2008) (finding that where two airlines were comparable, it would be unfair to implement a system which would provide a windfall to one group).

Another important tenet of seniority integration is that the relative seniority order of each pre-merger group generally should not be disturbed. Thus, to the greatest extent possible, the integration of seniority lists should not result in re-shuffling the order or changing the relative positions of individuals within their pre-merger groups. For similar reasons, it is inappropriate to retroactively alter the product of past seniority practices in effect when the employee group was represented by a different union or was unrepresented. Additionally, it is impractical, if not impossible, to re-write years of history based on records that may not be accurate or may not exist for all employees. *See Arbitration among Delta and Comm. of Former Western Flight Attendants and Original Delta Flight Attendants*, (Thomas T. Roberts, 1990) (rejecting proposal that training date should be used instead of date of hire because it involved too much “guesswork and

estimates” which “render[ed] too many of the dates unreliable to serve as a valid benchmark of seniority integration”).

Moreover, even if accurate records did exist, seniority integration to the greatest extent possible should honor the past choices made by employees in reliance on seniority practices, agreements, or company policies in effect at that time. Past decisions that impacted seniority -- for example, decisions about whether to transfer into or out of a particular group, work in management, or take leave -- were made based on the seniority practices or rules that existed at the time. Therefore, to retroactively change those rules now would be unfair to those employees who made choices based on the seniority rules in place at the time. *See Integration of Pan Am. and Nat'l Flight Attendant Seniority Lists*, Civil Aeronautics Board Order 79-12-164 (Richard A. Kasher, Jan. 30, 1981) (refusing to alter seniority lost when employees of one pre-merger group went to work for management because they did “so knowingly and with the understanding that [they] would be forfeiting certain accrued seniority benefits which the CBA provided,” but finding that similarly situated employees in the other pre-merger group would retain seniority for time spent in management as provided for under that group’s CBA because those employees “had expectations that their seniority was preserved”).

Moreover, in integrating the seniority lists of employees of the merging carriers, the focus must be on the most fair and equitable resolution for the group overall, not on redressing perceived past inequities for each individual employee. *Seniority Integration Arbitration between the Pilots of Northwest Airlines, Inc., and the Pilots of Delta Air Lines, Inc.*, (Bloch, 2008) (“... the focus here is necessarily on groups, not on any

individual Inevitably, and unavoidably, there will be perceived disparities and mismatches on individual levels, on both sides, under the merged list”). Finally, the workforces must be integrated in a fair and equitable manner, but nevertheless the “pre-merger expectations borne by both sides to this process will, in virtually all cases, be tempered and shaped by the realities of an enlarged, merged workforce.” *Id.*

Finally, as previously discussed, IAM’s policy is to order employees according to their existing seniority dates and this is widely recognized as a fair and equitable method of seniority integration. *See Lee & Singer*, at 12 (noting that the only circumstance in which arbitrators have deviated from the normal range of seniority outcomes, represented by date-of-hire or the ratio method, has been when “the acquired firm was financially insolvent and would have been forced to liquidate had it not been acquired”).

2. Application of the IAM Seniority Integration Policy

The central task in this matter is to apply the IAM’s seniority integration policy in a manner that is fair and equitable under the particular circumstances of this merger. As discussed above, the IAM’s policy is to integrate seniority by date of hire, or by date of entry into classification for purposes of bid seniority. In the case of the vast majority of the employees covered by this integration process, the application of this policy is straightforward, and simply involves placing employees in order according to their equivalent dates at each pre-merger carrier. In some instances, however, selecting equivalent dates from among the dates maintained by the pre-merger companies has proved more challenging.

When existing dates are not exactly equivalent, I am recommending that the IAM use those existing dates that I find to be the most nearly equivalent. I recognize that variations existed in the pre-merger seniority systems of the involved carriers. As will be discussed in greater detail below, however, I do not believe that it is appropriate as part of the seniority integration process to correct for these historical variations, even if it were possible to do so. Instead, my basic task is to take the existing seniority lists maintained at each pre-merger carrier and to integrate those lists in the order dictated by the most nearly equivalent dates maintained for employees.¹⁷

As explained above, going forward under the new Joint Collective Bargaining Agreements, each employee will need two seniority dates: (1) a “Bid Seniority Date” to be used for all bidding purposes other than vacation bidding; and (2) a “Company Seniority Date” to be used for furlough/recall purposes and vacation bidding. I recommend that these dates be determined and integrated for the three crafts at issue here in the following manner.

¹⁷ It should also be noted that under the applicable Collective Bargaining Agreements, employees on the furlough list cannot displace active employees. Instead, furloughees must await recall or may bid on vacancies on the same terms as other employees. The seniority integration process does not alter these CBA provisions governing furlough. Therefore, although in some circumstances active Continental employees may appear on the integrated seniority lists in date order below United employees who are currently on furlough, under the terms of the CBAs this will not result in active employees being displaced by furloughees.

a. Bid Seniority Dates

Passenger Service Employees. The Bid Seniority Date for pre-merger United and Mileage Plus Passenger Service employees should be the same as their existing PCE Seniority Date. The Bid Seniority Date for pre-merger Continental and Continental Micronesia Passenger Service employees should be their existing Bid Date. The PCE Seniority Date used by United and Mileage Plus employees is equivalent to the Bid Seniority Date used by Continental and Continental Micronesia employees because both dates reflect time spent working in the Passenger Service craft.¹⁸ In addition, Passenger Service employees at all of the pre-merger carriers have used these dates for bidding purposes in the past, and so it is appropriate that they continue to do so. Accordingly, the integrated seniority lists for Passenger Service employees should be ordered according to these dates.

Fleet Service Employees. Under the new Fleet Service Agreement, there will be three separate classifications: Ramp Serviceman, Lead Ramp Serviceman, and Vehicle Driver. Employees who are in the Lead Ramp Serviceman classification will also maintain seniority in the basic Ramp Serviceman classification. The issue of Bid Seniority for Lead Ramp Servicemen will be addressed separately below, but this section of the report will address Bid Seniority for Ramp Servicemen and Vehicle Drivers.

¹⁸ Historically, Continental Micronesia employees constituted a combined craft or class of Fleet Service and Passenger Service employees, but as a result of the NMB's single carrier decisions following the merger, separate crafts of Fleet Service and Passenger Service employees will exist going forward. Accordingly, these Continental Micronesia employees made a one-time election between Fleet Service and Passenger Service. Following the election, the employee's existing Bid Date continues to be used as their Bid Seniority Date.

The existing Classification Seniority dates for United Ramp Servicemen should serve as their Bid Seniority Dates under the new CBA. Continental and Continental Micronesia Fleet Service employees should use their existing Bid Dates as their Bid Seniority dates within the basic Ramp Servicemen classification. The integrated list for Ramp Servicemen should be ordered according to these dates.

With respect to United Vehicle Drivers, they too should also use their Classification Seniority dates as their Bid Seniority Dates going forward. However, there are no Continental employees in positions equivalent to the United Vehicle Drivers and therefore no need to integrate seniority for this classification.

Stores Employees. Under the new Stores Agreement, there will be two separate classifications: Storekeepers and Lead Storekeepers. Employees who are in the Lead Storekeeper classification will also maintain seniority in the basic Storekeeper classification. The issue of Bid Seniority for Lead Storekeepers will be addressed separately below, along with Bid Seniority for Lead Ramp Servicemen, but this section of the report will address Bid Seniority for the basic Storekeeper classification.

The existing Classification Seniority dates for United Storekeepers should serve as their Bid Seniority Dates under the new CBA. Continental and Continental Micronesia Stores employees should use their existing Bid Dates as their Bid Seniority dates within the basic Storekeeper classification. The integrated list for Storekeepers should be ordered according to these dates.

b. Company Seniority Dates

The Company Seniority Date for pre-merger United and Mileage Plus employees clearly should be the same as their existing Company Seniority Date (also known as the Consent Decree Date for United Ramp and Stores employees). Identifying the existing seniority date most equivalent to the Company Seniority Date for pre-merger Continental and Continental Micronesia employees has proved to be more complicated. Continental and Continental Micronesia maintained three different dates for employees: Hire Date, Adjusted Service Date, and Bid Date. Roughly speaking, the Hire Date reflects the first day of an employee's current employment after the completion of training. The Adjusted Service Date generally reflects of the employee's hire date with the company as adjusted for periods on furlough or extended leaves of absence. The Adjusted Hire Date was used to determine benefits, but this date was not used for bidding purposes or furlough and recall. As a general matter, the Bid Date indicates when an employee first worked in their current craft, although it too was adjusted for furloughs and some extended leaves. The Bid Date was used for all bidding purposes, as well as furlough and recall.

For a third of all Continental employees and nearly all Continental Micronesia employees, all three of these dates are the same. When the dates are different, in most cases, the employee's Hire Date is earlier than his or her Adjusted Service Date or Bid Date, as would be expected. But in the case of a few hundred Passenger Service employees and Fleet Service employees, and 40 Stores employees, the Adjusted Service Date and/or the Bid Date is earlier than the Hire Date given in the company records. The company has explained that Continental credited these employees for some but not all

seniority purposes with time accrued at a corporate subsidiary or affiliate of Continental, but still considered their Hire Date to be the first day of service with the mainline carrier.

Under these circumstances where employees were credited with company service for some purposes, but not others, I think that the fairest and simplest approach is to use the earliest of the three dates (i.e. Hire Date, Adjusted Service Date, or Bid Date) going forward as the Company Seniority Date for Continental and Continental Micronesia employees. In this way, no Continental or Continental Micronesia employee will be deprived of service time which they currently use for some seniority purposes.

I understand that Continental and Continental Micronesia employees currently use their Bid Date for furlough/recall purposes, and that using their earliest seniority date as the new Company Seniority Date will reorder these employees among themselves for furlough/recall purposes. However, this reordering is not a consequence of the seniority integration process, but rather the result of the terms of the newly ratified Agreements. The new CBAs provide that furlough and recall is based on a Company Seniority Date. But for most employees Continental and Continental Micronesia employees, the Bid Date does not reflect their company seniority and instead functions as a craft seniority date. Therefore, using the Bid Date for furlough/recall for these employees would disadvantage them in the integration process *vis-à-vis* their counterparts at United, as well as contravene the terms of the new CBAs.

In summary, pre-merger United and Mileage Plus employees should continue to use their current Company Seniority Dates. The Company Seniority Dates for pre-merger Continental and Continental Micronesia employees should be the earliest of their

Hire Date, Adjusted Service Date, or Bid Date. The involved employee groups should be ordered by these dates on the integrated seniority lists.

c. Tie-Breaking Rules Applied to Integrated Lists

The new Agreements contain new rules for breaking ties on both the Seniority List (used for all bidding purposes except vacation) and the Juniority Lists (used for furlough/recall). These tie-breaking methods will be used to break new ties between United and Continental employees resulting from the integration of seniority lists. However, the tie-breaking methods previously used to order seniority lists at the pre-merger carriers will be retained insofar as to avoid reshuffling the seniority order among the pre-merger groups in a manner that is both unnecessary and disruptive. However, all ties on the Juniority Lists, even those among pre-merger Continental and Continental Micronesia employees, will be resolved according to the rules of the new CBA since the Juniority Lists will be organized by Company Seniority Date going forward, not the Bid Dates previously used at Continental and Continental Micronesia.

Under the new Agreements, ties on the Seniority Lists, which are organized by Bid Seniority Date, are broken by Company Seniority Date and Ties on the Juniority Lists, which are organized by Company Seniority Date, are broken by Bid Seniority Date. For the Lead lists under the Fleet and Stores Agreements, ties on the Seniority List are first broken by Basic Bid Seniority Date and then Company Seniority Date. Ties on the Lead Juniority List are broken by Lead Bid Seniority Date and then Basic Bid Seniority Date. If any ties still exist on any of these lists after these tie-breakers are used, those ties are then broken by the lowest number comprised of the last four digits of the employee's

Social Security Number and then the lowest number comprised of the month and day of the employee's birth.¹⁹

3. Bid Seniority for Lead Ramp Servicemen and Lead Storekeepers

The integration of Lead Ramp Servicemen and Lead Storekeepers for purposes of Bid Seniority presents a unique issue. The difficulty lies in the fact that Ramp and Stores Leads at United currently have classification seniority dates as Leads, whereas Leads at Continental and Continental Micronesia do not have an equivalent classification date reflecting the time in which they have worked as leads. Because Lead Seniority only applies at a particular Location/Point, this issue only impacts Locations/Points where both pre-merger United and pre-merger Continental employees are working. At Locations/Points where there is no overlap between pre-merger United and pre-merger Continental/Continental Micronesia employees, I recommend that United employees continue to use their Lead classification dates, and Continental and Continental Micronesia employees should use their current Bid Dates as their Lead Bid Seniority Dates. However, in those Locations/Points where there is overlap between pre-merger United and Continental employees, as explained in detail below, I recommend a rank ratio method of seniority integration.

¹⁹ The tie-breaking issue becomes more complicated, however, when the ties involve multiple employees from each pre-merger group. For example, six United employees are tied with three Continental employees with the same seniority dates. When such a tie occurs, I recommend that the groups be proportionately integrated into each other according to their pre-merger order. This is fair and will preserve the pre-merger seniority order of both groups. Again, this method would only apply for the limited purpose of breaking multiple ties between the pre-merger groups and would not impact anyone else on the lists.

Under the new Agreements, bidding seniority for Lead Ramp Servicemen and Lead Storekeepers will be based on their Bid Seniority Date in the Lead classification. This date will reflect when a Lead most recently began working in a Lead position at a particular Location/Point. The aggregation of airports within a particular geographic area into Points is a function of the new Joint Collective Bargaining Agreements and is intended to facilitate the transfer of employees among nearby airports. The new Agreements provide for nine Points. For example, the New York Point consists of LGA, JFK and EWR.²⁰ If a Lead transfers to a non-Lead position or to another airport outside his Location/Point, his Bid Seniority Date as a Lead is lost. If he were later to return to a Lead position at either his old Location/Point or a new one, he would establish a new Bid Seniority Date as a Lead at that time.

In the past, United and Continental Leads had significantly different systems for bidding to work as Leads. The United Leads operated under essentially the same system that is retained in the new Agreements, with the Classification Seniority dates for Leads corresponding with the date they most recently began working as a Lead at a particular Location/Point. On the other hand, the Continental Leads used their Bid Date for bidding purposes, which reflects time worked in the Fleet Service craft generally, not time worked as a Lead only. Accordingly, when these Leads transferred between Lead and

²⁰ The other Points include the Chicago Point (CHI, MDW, ORD, OPC, and WHQ), Hawaii Point (HNL, ITO, KOA, LIH, and OGG), Los Angeles Point (BUR, LAX, ONT, and SNA), Miami Point (FLL, MIA, and PBI), San Francisco Point (OAK, SFO, and SJC), Washington Point (BWI, DCA, and IAD), Houston Point (IAH and HOU), and Guam Point (SPN and GUM).

non-Lead positions or between airports, their Bid Dates were not impacted, unlike the Classification Seniority dates for the Leads at United.

Because Lead Bid Seniority is established on a Location/Point basis, those Locations/Point where only pre-merger United or pre-merger Continental or Continental Micronesia employees are working do not need to be integrated. These employees will simply retain the dates that they currently use for bidding purposes. At United-only Locations/Points, Leads can continue to use their current Lead Classification Seniority dates as their Lead Bid Seniority Dates. For Lead Ramp Servicemen, the United-only stations are: BUF, DEN, DTW, HNL, MCO, MKE, OMA, PDX, PIT, SAN, SLC, SMF and TPA. For Lead Storekeepers, the United-only stations are: OMA, SFO, WHQ, ORD, DEN, PHL, BOS, SEA, SAN, IND, PDX, LAS, IAD, MIA, OAK and ATL.

At Locations/Points where only Continental or Continental Micronesia employees work, Ramp and Stores Leads can continue to use their current Bid Dates as their new Lead Bid Seniority Dates. For Lead Ramp Servicemen, the Continental-only stations are: AUS, CMH, DFW, GSO, IAH, IND, JAX, LRD, MCI, MFE, MSY, OKC, ORF, PNS, PVD, RIC, RSW, SAT, STL and TUL. For Lead Storekeepers, the Continental-only stations are CLE, IAH, HOU and MCO. Continental Micronesia only represents employees on Guam and is the only pre-merger company to do so, accordingly, these employees will also continue to use their Bid Date as their Lead Bid Seniority Date.²¹

²¹ Although Lead Ramp Servicemen at IAD and WHQ and Lead Storekeepers at JFK and LGA are only from pre-merger United and Fleet Service employees at MIA, ORD, PBI and SNA are only from pre-merger Continental, because these stations are part

Because pre-merger Continental employees did not maintain a separate seniority date reflecting their time worked as Leads, the IAM seniority integration policy simply does not address this unique circumstance. The IAM policy anticipates the existence of at least roughly equivalent dates for both pre-merger groups reflecting how long each employee has worked in the Lead classification. Here, however, no such date was maintained for Continental Leads. The IAM policy therefore does not answer the question of how to integrate these lists. Instead, I must apply general principles of equity and fairness in order to integrate Bid Seniority for Leads.

Several employees submitted comments requesting that I go back and review the employment records for Continental Leads in order to create Lead classification dates for them. For several reasons, however, I must reject this proposal. First, I have concluded that the date when each Continental Lead began working in a Lead position cannot be determined with accuracy from the company's employment records. The necessary information was requested from the carrier, but it proved too inaccurate to be relied on for integration purposes. This is unsurprising given that the date when an employee first began working as a Lead carried no significance under the seniority system in place at pre-merger Continental. Moreover, since Continental Leads, unlike United Leads, regularly moved in and out of Lead positions without any change to their bidding seniority, trying to recreate a Lead seniority date for them now would be unfair and inequitable, even if there were reliable records. It would not be fair to the Continental

of Points that also have the other pre-merger company's employees, Seniority Lists for these stations must be integrated.

Leads to assign to them the date when they most recently started working in a Lead position since they moved in and out of Lead positions frequently with the understanding that it would not affect their seniority. It would also not be fair to the United Leads to assign the Continental Leads the date they first started working in Lead positions even if they subsequently returned to a non-Lead position because the United Leads lost their bidding seniority if they similarly left a Lead position.

It would also be unfair to integrate the Bid Seniority lists according to Company Seniority Date. Such an approach would internally reorder the United Leads, which is unacceptable. The United Leads are currently ranked by their Classification Seniority Date, which is not directly correlated with their Company Seniority. For example, a United Lead with 8 years of Classification Seniority and 10 years of Company Seniority is ranked above a Lead with 7 years of Classification Seniority and 11 years of Company Seniority. If the lists were integrated by Company Seniority, the order of these Leads would switch. Such internal reordering is undesirable and contrary to the principles of fair seniority integration and, therefore, must be rejected.

After careful consideration of the issue of Lead Bid Seniority, I therefore recommend integration of the Leads lists respecting the relative order of the Leads on each list according to a ratio rank method for employees at mixed United and Continental Locations/Points. The ratio rank method is a generally accepted alternative to the date of hire/entry method of seniority integration. *See generally Lee & Singer, Interpreting the "Fair and Equitable" Standard in Labor Force Seniority Integration.* The two methods rest upon different equitable justifications. The date of hire/entry method maintains

longevity, meaning that more experienced employees are placed above less experienced employees of both groups. Ratio rank methods, on the other hand, preserve the relative bidding position of both groups, meaning, for example, that employees in the top 10 percent of list before the integration generally remain in the top ten percent after the integration. When either method could be used there may be persuasive arguments for adopting one method over the other. Here, however, the date of hire/entry method (whether by Classification Seniority or Company Seniority) is unworkable for the reasons discussed above. Therefore, I recommend that a ratio rank method should be used because in this circumstance it is fair to both groups and in that sense is consistent with the principles underlying the IAM's seniority integration policy.

The rank ratio method is a proportional method of integration, which also preserves the seniority order of employees at their respective pre-merger companies. For example, if there is a 3:1 ratio of United to Continental Leads at a particular Location/Point, the Continental employees would be integrated into the United list in the order in which they appear on the Continental seniority list according to a 3:1 ratio. Under this method, the highest United and Continental Leads would be assigned the top two spots, with the Lead with the earlier Company Seniority Date ranked first. The remaining Leads would then be integrated according to the established ratio.

For example, if there were 15 Continental Leads and 3 United Leads and the highest ranked United Lead has an earlier Company Seniority Date than the highest ranked Continental Lead then the list would be as follows:

<u>Carrier</u>	<u>Pre-Merger Rank</u>
1. United	(1)
2. Continental	(1)
3. Continental	(2)
4. Continental	(3)
5. Continental	(4)
6. Continental	(5)
7. United	(2)
8. Continental	(6)
9. Continental	(7)
10. Continental	(8)
11. Continental	(9)
12. Continental	(10)
13. United	(3)
14. Continental	(11)
15. Continental	(12)
16. Continental	(13)
17. Continental	(14)
18. Continental	(15)

In some instances, the rank ratio method could place a Continental Lead above a United Lead, even though the Continental employee was first hired after the United employee became a Lead. Such placement would be inherently unfair because there is simply no way that the Continental Lead could have worked in a Lead position as long as the United Lead. To avoid this situation, the lists should be arranged to place the United Lead ahead of the Continental Lead and to slot in the Continental Lead immediately before the first United Lead with a Lead Classification date later than the Continental Lead's Company Seniority Date. In application, it has only been necessary to make this adjustment with respect to a handful of employees.

Again, the rank ratio method of integration is only relevant to Locations/Points which represent employees from both pre-merger groups. For Lead Ramp Servicemen,

this rank ratio integration will occur at the Chicago, Los Angeles, Miami, New York, San Francisco and Washington Points and at ATL, BOS, CLE, MSP, PHL, and SEA. For Storekeepers, this rank ratio integration will occur at the New York Point and at LAX and HNL. Where the rank ratio method is used, Leads will be assigned a rank to denote their placement on the list.

I am also aware that at certain of United line stations, PCEs performed work that has traditionally been considered Ramp work at larger United locations. However, under the new CBAs, going forward the Ramp work at these lines stations will be performed by employees in the Fleet Service craft. Therefore, current employees at the line stations will be given a one-time opportunity to elect whether to remain PCEs or to transfer to the Ramp Servicemen classification under the Fleet Agreement with their previous seniority dates intact. When this election occurs several months from now, it will be necessary to place these employees who elect to become Ramp Servicemen on the integrated seniority lists using what was their PCE date as their Bid Seniority Date in the basic Ramp Servicemen classification. However, to the extent that these PCEs are currently working as Leads, it cannot be determined how they will be placed on the integrated Lead lists consistent with my recommendations for fair and equitable integration until the number and identity of the employees making the transfer election is known.

4. Employee Comments Received Regarding Past Differences in Seniority Accrual between Pre-Merger Work Groups

Seniority accrual and retention was handled differently in the past for the different work groups at the pre-merger carriers. Because of these differences, I received

numerous employee comments requesting that I make adjustments to past seniority accruals in order to negate the differences in seniority dates among the groups resulting from differences in past seniority practices. Unsurprisingly, commenters only requested retroactive adjustments that would increase their seniority; no one advocated for negative adjustments to their own seniority in order to equalize the past practices at the pre-merger carriers. Although I understand why employees would advocate for such adjustments, I explain below the seniority integration process is not and should not be a vehicle for re-writing history. In particular, the comments submitted to me focused on the following differences in seniority accrual among the pre-merger work groups.

Training Time. Some pre-merger groups accrued seniority for time spent in training, while others did not. At United and Mileage Plus, seniority generally started the first day of work and included any training time. Similarly, in the last few years, pre-merger Continental Fleet Service employees and Material Specialists accrued seniority for training time. For unrepresented employees at pre-merger Continental, however, seniority did not start accruing until the completion of training, which usually lasted one to six weeks. At Continental Micronesia, employees generally accrued seniority for training time when hired to fill an immediate opening, but those who did not commence service immediately following their training did not accrue seniority for their training time. Due to these differences in seniority accrual for training time, several pre-merger Continental employees submitted comments requesting that their training time now be added to their seniority dates.

Transfers to Different Positions. Seniority retention and accrual when transferring among job positions varied greatly among the pre-merger groups. Ramp and Stores employees at United had a classification-based seniority system, with their Classification Seniority starting the first day worked in the classification. Notably, however, there were only three basic classifications covered by the Ramp and Stores Agreement, including Ramp Serviceman, Storekeeper, and Vehicle Driver. If a Ramp or Stores employee transferred to a different classification, their former Classification Seniority was lost after two years. For all other employees at pre-merger United, Mileage Plus, Continental and Continental Micronesia, seniority was by craft or work group and continued to accrue even while moving to different classifications within their group.

Several Ramp and Stores employees from pre-merger United submitted comments requesting that I reconstruct the work histories of pre-merger Continental employees to try to determine when each employee started working in his or her particular classification. Additionally, I received hundreds of comments from both pre-merger Continental employees and pre-merger United PCEs expressing concern that I would do just that. These employees noted that they transferred freely between classifications under their old agreements or company policies with the understanding that it would not impact their bidding seniority and maintain that it would be unfair now to make retroactive adjustments.

For employees at pre-merger United and Mileage Plus, Classification or PCE Seniority was retained and only continued to accrue for two years after transferring to a different IAM-represented classification outside of their group. For Fleet Service

employees at pre-merger Continental, Craft Seniority was retained, but did not accrue, if the employee moved to a position outside of the Craft. Generally, employees of non-represented groups at pre-merger Continental could transfer to other non-represented positions without any loss in their seniority. Employees transferring into these groups from union-represented crafts, however, were only credited with Company Seniority, not Bid Seniority. Under recent changes to the Stores Work Rules, Material Specialists at Continental continued to retain and accrue their “Craft Seniority” while working for other positions with the company. At pre-merger Continental Micronesia, Bid Seniority was lost if the employee accepted a position in an unrepresented group.

I received numerous comments from both pre-merger United and pre-merger Continental employees about how their Classification or Bid seniority was credited, or not, when transferring to a different work group. Generally speaking, unrepresented employees were unhappy if they lost seniority when transferring to or from a represented group and represented employees were unhappy if they lost seniority when transferring to or from an unrepresented group. All requested that seniority time lost due to these transfers be restored to them.

Time Working in Management. Similarly, whether or not an employee retained or continued to accrue seniority while working in management varied among the pre-merger groups. For employees at pre-merger United and Mileage Plus, Classification or PCE Seniority only accrued for the first six months of promoted status, after which it was retained but no longer accrued. Pursuant to the Consent Decree, the same adjustment was made at pre-merger United to Ramp and Stores employee’s Company Seniority date for

purposes of furlough and recall (“Consent Decree date”), while a similar adjustment was not made to the Company Seniority dates of PCE Group employees at United or Mileage Plus. For Fleet Service employees at pre-merger Continental, Craft seniority was retained and continued to accrue while working in a management position within the Fleet Services Department, but was lost if the employee was promoted outside this department. The unrepresented employees at pre-merger Continental, however, continued to retain and accrue both Bid and Company Seniority while working in management. With some minor exceptions, employees at pre-merger Continental Micronesia lost Bid Seniority if they transferred to a management position.

Due to these differences, I received numerous employee comments from pre-merger United employees who either wanted seniority restored for time spent in management or wanted this time deducted from the seniority of employees at pre-merger Continental. I also received comments from employees at pre-merger Continental who feared that this process would result in them losing seniority for past time worked in management, noting that they made past decisions regarding promotion under the belief that it would not impact their seniority.

Medical and Other Leaves of Absence. At pre-merger United, Classification or PCE Seniority continued to accrue for the first 90 days on leave of absence, unless the leave was due to the employee’s health. In the case of leave for an extended illness, the employee continued to accrue Classification or PCE Seniority for up to three years, after which time the employee was considered administratively terminated. For unrepresented

groups at pre-merger Continental, Bid Seniority only accrued for the first 30-90 days during a leave of absence, including extended medical leaves.

At pre-merger United, an employee's Company Seniority was also adjusted for personal or educational leaves after 90 days, while at pre-merger Continental it was adjusted for such leaves after 30 days. Additionally, at pre-merger Continental, Company Seniority for unrepresented employees was also adjusted for company-offered leaves of absence, family/medical leave, or unpaid medical leave longer than 90 days. At pre-merger Continental Micronesia, Company Seniority only accrued for 90 days during company-offered leaves of absences and 30 days for personal leaves of absences.

Numerous employees submitted comments requesting seniority restoration for various types of leaves of absence, including several employees at pre-merger Continental who had their Company Seniority dates adjusted for extended medical leaves of absence. I also received several comments from pre-merger Continental employees who wanted retroactive restoration of seniority for personal or medical leaves of absence, even though their counterparts at pre-merger United had similar adjustments or, in some cases, less favorable adjustments. For example, I received a comment from one employee from pre-merger Continental who wanted his seniority restored after a five-year extended medical leave of absence based on his belief that employees at pre-merger United continued to accrue seniority while on extended medical leave. If this employee had worked at pre-merger United, however, he would have been considered administratively terminated after three years of extended illness.

Part-Time Fleet Employees. How seniority was maintained for part-time Ramp and Stores employees at pre-merger United was different than their counterparts at pre-merger Continental. At pre-merger United, part-time Ramp and Stores employees did not accrue seniority prior to 2003. Additionally, whether an employee was hired on as a full-time or part-time employee was entirely within the company's discretion. Starting in 2003, however, these employees were added to the seniority rosters and assigned a common "Classification Seniority" date of May 1, 2003, regardless of when they actually started working in the classification. At pre-merger Continental, however, no distinction was ever made between full-time and part-time employees for seniority purposes. Instead, part-time employees acquired seniority in the same manner as full time employees. Several comments were received from part-time United Ramp and Stores employees who began work prior to 2003 requesting that their seniority be altered so that the rules that applied to pre-merger Continental part-time employees would now be applied to them retroactively.

Time on Furlough. How long an employee accrued seniority while on furlough or how long he or she remained on the furlough list also varied among the pre-merger groups. At pre-merger United and Mileage Plus, employees continued to accrue seniority while on furlough. Additionally, employees at pre-merger United had indefinite recall rights, while at Mileage Plus they had a six-year right of recall.

At pre-merger Continental, however, some groups continued to accrue some forms of seniority while on furlough, while others did not. Generally, Company Seniority stopped accruing after 30-90 days of furlough, depending on the group. Bid Seniority

also continued to accrue while on furlough for employees of pre-merger Continental and Continental Micronesia, except that Reservation Agents at pre-merger Continental only accrued Bid Seniority for the first 30 days of furlough. The recall rights of employees at pre-merger Continental and Continental Micronesia also varied depending on the group, ranging from three to six years. After an employee's recall rights expired, he or she was considered administratively terminated. If the employee was later re-hired, he or she would start as a new hire with the company and acquire new seniority dates.

I received numerous comments from employees at pre-merger Continental asking for restoration of their seniority for periods of time spent on furlough. I also received comments from employees whose recall rights expired under the practices in place at their time of furlough and who were later re-hired by the company as new hires and placed at the bottom of the seniority list.

While I appreciate why employees have requested these adjustments in their seniority dates, there are several reasons why it would be inappropriate for me to attempt to grant such requests. First, the past accrual of seniority was the result of contracts between the parties or company policies. It is not my role during the seniority integration process to sit in judgment of these contracts or policies after-the-fact and decide which I believe were proper and which were not. Moreover, as previously discussed, seniority in the airline industry is a zero-sum endeavor, with one person's gain being another person's loss. If I were to add seniority to individuals who were not credited with it in the past, this would have a negative impact on everyone placed after them on the seniority list. In addition, retroactively altering the seniority dates of thousands of employees to make

these adjustments for events that may have occurred decades ago is nearly impossible as a practical matter, not just in terms of time constraints, but also because of inaccurate or incomplete records. Any attempt to reconstruct work histories would be based largely on estimates and guesswork, which is hardly fair or equitable in a matter as important as seniority integration.

Moreover, even if accurate records did exist for every single employee, which is highly unlikely, adjusting seniority for all of these purposes would result in a major re-shuffling of the seniority order currently in place for each pre-merger groups, including at stations that are populated only by pre-merger United or pre-merger Continental employees that would not otherwise be impacted by the seniority integration. Finally, past decisions that impacted seniority -- for example, decisions about whether to transfer among positions, work in management, or take a personal leave -- were made based on the seniority practices in existence at the time and retroactively changing them now would be grossly unfair to other employees who also made decisions in reliance on the practices in place at the time. For example, one pre-merger United employee may have made the decision to transfer to management, knowing that he or she would lose seniority, while another similarly situated employee declined to transfer to management in order to retain seniority. Similarly, pre-merger Continental employees made the decision to transfer to management with the understanding that they would keep their seniority. To now unsettle expectations regarding seniority based upon the contracts and policies in place when employees made important career choices in the past would be

contrary to the principles of fair and equitable integration. For all these reasons, I must decline the many requests submitted to me to undo past seniority practices.

5. Claims of Past Unfairness in the Application of Seniority Rules

Both through the comment process and during the fact-finding and mediation session I conducted, a considerable number of employees have advocated for adjustments to their seniority in order to remedy past treatment which they view as unjust. Many members have complained to me that their seniority was unfairly diminished under past policies. In particular, previously unrepresented employees who lacked contractual protections have complained that management did not consistently apply seniority practices. Many individuals raising these claims of past unfairness have indicated that they pursued these seniority issues in the past either through contractual grievance procedures, if represented, or through management, if unrepresented, but their claims were rejected. They now ask that I go back and investigate the circumstances surrounding each individual matter to determine whether to restore seniority that was often lost five, ten, or even twenty years ago.

I fully appreciate the strong feelings that many of these members have expressed regarding these seniority issues. I recognize that it is no small matter to be deprived of seniority that one believes should rightfully be theirs. However, I must consider these matters in the context of the present seniority integration as a whole, and conclude that it is neither the proper time nor forum to resolve issues that arose in some cases decades ago.

It bears emphasis that every work group had at least some means of trying to address these seniority issues when they first arose, whether through grievance procedures under a collective bargaining agreement or for unrepresented employees by raising the issue with a supervisor or the company's human resources department. Indeed, many of the employees requesting changes attached past grievance decisions or correspondence with the company that showed that they properly raised their issues, but did not get the results they sought. It would not be proper for me now in the context of this proceeding to second-guess the past results of grievances or formal appeals to management. Moreover, even if I were inclined to revisit these issues, to make adjustments based upon events occurring many years in the past would be unfair to other employees who have reason to believe that these matters were settled.

6. Issues Relating to Provisions in the Recently Ratified Agreements

A number of the comments submitted to me raise concerns and suggestions as to how seniority should be treated following the integration, particularly for bidding purposes. For example, some employees requested that Company Seniority rather than Classification Seniority be used for bidding purposes. Other employees argued that additional classifications should be created for bidding purposes. A few employees complained that under the newly ratified agreements United employees at line stations have a one-time opportunity to select either a below-the-wing or an above-the-wing position without the loss of their existing Bid Seniority. Essentially, these employees argue that they were not offered a similar opportunity in the past.

The issues raised in these and similar comments are simply beyond the scope of my jurisdiction as set forth in the agreement between the Company and the Union establishing this seniority integration process. These comments can be read to request changes to the recently ratified Joint Collective Bargaining Agreements, which is beyond my mandate. Those Agreements require that Bid Seniority Dates reflecting how long employees have worked in their classification be used for bidding purposes. Those agreements also determine when employees will and will not retain their Bid Seniority Dates as a result of transfer among classifications. I have no authority to alter the terms of these Agreements which have now been ratified by the membership. The focus of the seniority integration process is to determine a fair and equitable manner to order employees of the pre-merger carriers on integrated seniority lists. This Report and Recommendations does not purport to modify those issues have been resolved by the memberships' ratification of the new Joint Collective Bargaining Agreements.