UNITED

Michael P. Beirne
Director – Training Deployment
Global Operations

August 15, 2017

Mr. Klemm,

Enclosed is the signed copy of the United Airlines/ IAM – SOR decision.

Regards,

Michael Beirne
Director – Training Deployment

BEFORE THE UNITED AIRLINES/IAMAW
SYSTEM BOARD OF ADJUSTMENT

In the Matter of Arbitration between: UNITED AIRLINES, INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT 141 (Station Operations Representatives)	**ARBITRATOR'S** **OPINION** **AND** **AWARD**

System Board of Adjustment: Fredric R. Horowitz, Esq., Neutral Member
Michael Beirne, Company Member
Alexander Gerulis, Union Member

Appearances:

Company: Ellen C. Ham, Esq. and
Jessica L. Asbridge (on brief)
Ford Harrison LLP

IAM: Robert S. Clayman, Esq.
Guerrieri, Clayman, Bartos, Parcelli & Roma P.C.

Hearings Held: December 6, 2016
Chicago, Illinois

January 9 and 10, 2017
Los Angeles, California

Submitted to Board: April 4, 2017

Executive Sessions: July 19 and 24, 2017

This arbitration arises under the Passenger Service Employees 2016-2021 Agreement ("Agreement") between United Airlines, Inc. ("Company") and the International Association of Machinists and Aerospace Workers ("IAM") [JX 1]. The parties concur the grievance at issue was processed pursuant to the provisions of Article 9 of the Agreement and is now properly in arbitration before this System Board of Adjustment.

MATTERS AT ISSUE

The parties offered separate statements of the issues to be decided in this proceeding and stipulated the Board would have the authority to frame the issues after the case was submitted for decision [TR 7-9].

The Union proffered the following statement of the issues:

1. Whether the Company is violating the Agreement by taking away the work performed by Station Operations Representatives ("SOR") at ORD, SFO, DEM, LAX and IAD and giving that work to management personnel, which includes work already handed over to management personnel as well as work that the Company has announced that it intends to give to management and take away from the Passenger Service Employees?

2. If yes, what is the appropriate remedy?

The Company's statement was as follows:

1. Whether the Company violated Article 2 (Job Security) and/or Letter of Agreement 9 (Job Protection) of the Agreement by fulfilling the requirement of the SOR Transition LOA wherein the parties agreed to transfer tower control work of certain airport-based Station Operations Representatives to management employees at the following hubs: ORD, DEN, LAX, and SFO?

2. If yes, what is the appropriate remedy?

From the record presented, the Board determined the issues raised by this grievance are:

1. Does the transfer of tower control work performed by SORs at ORD, DEN, LAX, and/or SFO violate the Agreement?

2. If yes, what is the appropriate remedy?

BACKGROUND

This group grievance contests the transfer to management of the tower control work performed by IAM represented Station Operations Representatives ("SOR") at ORD, DEN, LAX, and SFO. The duties in question involve controlling the aircraft when pulling in and out of the gate area by communicating with the Company's station operations center ("SOC") and the pilots by radio. Prior to the merger in 2010 of United ("s-UA") and Continental ("s-CO"), SORs performed these duties at s-UA hubs in ORD, LAX, DEN, and SFO. At s-UA hub IAD, the duties were performed by the local airport authority. In contrast, these duties at s-CO hubs in EWR and IAH have historically been performed by management air traffic control tower controllers ("ATC"). The ATCs at s-CO also performed other tower duties requiring specialized training not afforded to s-UA SORs such as controlling aircraft in designated areas and sequencing arrivals and departures.

Following the merger, the Company faced the daunting task of integrating operations and cultures at all of their locations. With respect to the tower control function at issue here, management in October 2011 issued a report recommending the adoption of the s-CO model by staffing all s-UA hubs with management ATCs. Implementation of a transfer of SOR duties at s-UA hubs to management, however, required the concurrence of the Union. Those negotiations did not commence until 2012 when it was confirmed by the NMB that IAM represented all Passenger Service Employees ("PSE") from both pre-merger companies.

The Company's chief objective for the joint cba was to harmonize the differences of how and by whom the work at s-UA and s-CO would be performed. A central goal of the Union was to improve job security and stop the erosion of jobs and work which had occurred at s-UA over the past decade. In December 2012, the parties tentatively agreed to a three-part quid pro quo related to the SOR duties in question to be included in the joint cba: 1) the Hub Ops Coordinator work at s-CO will be performed by Zone Controllers, a management job at s-UA; 2) SOR work at the s-UA hubs would be transferred to management and retained by management at the s-CO hubs; and 3) third party vendor work at s-CO HNL would be trans-

ferred to PSEs [CX 20]. The Company announced the transfer to management of SOR work at s-UA hubs and the third party vendor work in HNL to the bargaining unit would occur following ratification of the joint cba. The Hub Ops Coordinator work at s-CO was transferred to management in January 2013, a right unilaterally exercised by the Company under the applicable s-CO cba.

In February 2013, the parties reached a tentative agreement ("TA") for the joint cba, but the TA was rejected in March 2013 by the IAM membership. In June 2013, before bargaining over the joint cba resumed, the Company proposed immediate implementation of the transfer of SOR work to management as well a division of the duties of Central Load Planners ("CLP") between management and the PSEs. The Union did not agree, and bargaining resumed for a second TA. Ultimately, the Company's proposal to divide CLP duties was included as LOA 5 in the second TA for a joint cba. The Company's proposal to transfer SOR work was contained in a side letter of agreement ("SOR LOA") dated November 1, 2013 [UX 4] signed by VP Labor Relations Jeff Wall and District 141 President & Directing General Chairperson Richard A. Delaney. But for reasons not identified in this record, the SOR LOA was not included by the parties in the second TA with the other LOAs submitted for membership ratification. The joint cba became was adopted by the parties in December 2013 and amendable on December 31, 2016 [JX 2].

In January 2014, the Company circulated a Q&A to management explaining the SOR position would be subsumed at the s-UA hubs into a management position called Air Traffic Systems Ramp Controller ("ATS") over a period of several months [CX 4]. SORs would be encouraged to apply, and those not awarded an ATS position would be allowed to bid into other PSE jobs [CX 4]. Management met with the SORs at each hub, including IAM ACGs at ORD and SFO, to discuss the transition. It occurred, however, that management's attention to other operational concerns delayed implementation of the transfer of tower duties. By April 18, 2016, the effective date of the current Agreement, the transitions were completed at ORD and SFO but had yet to be implemented at DEN and LAX.

In July 2015, District Lodge 141 was placed under supervision, direction, and control by the IAM Grand Lodge. On October 1, 2015, Mike Klemm succeeded Richard Delaney as PDGC. Also in October 2015, Oscar Munoz replaced Jeff Smisek as CEO and President of United. That month the Company reached out to the IAM to explore early and expedited

negotiations of successors to the cbas of all IAM-represented units. The Union responded by conditioning their participation on the preservation of work and no further loss of jobs. On November 5, 2015, the parties executed a letter confirming their agreement to enter early negotiations with the understanding, *inter alia*, the Company "will not contract out any work currently performed by those IAM-represented United employees at all hub and station airport locations" through the amendable date of the new agreement and not less than one year thereafter" [UX 1]. On November 30, 2015, a protocol for those negotiations was achieved setting a March 31, 2016, deadline for reaching a TA [UX 3].

During negotiations, the Union repeatedly made it clear to the Company that its intent was to preserve a "snapshot" of the existing work performed by IAM employees, not merely the jobs of those currently employed. Various job security provisions were discussed and adopted by the parties. At one point, the Union asked the Company for all existing LOAs for review. The Company gave the Union nine LOAs and confirmed these and no others were all the ones management wanted to include in the successor agreement. The SOR LOA was not among them. The nine LOAs brought by the Company to the table were discussed and incorporated into the TA for the successor agreement ratified by the membership to become effective April 18, 2016 [JX 1]. Neither the existence of the SOR LOA nor the transfer of SOR work was mentioned or discussed across the table by either party during those negotiations.

In August 2016, PDGC Klemm was informed by AGC Rich Robinson that the Company posted openings for management positions in DEN for work being performed by SORs. Klemm expressed surprise there could be a transfer of any work from the bargaining unit, but Robinson replied the Company had said there was an LOA. Robinson obtained a copy of the SOR LOA which he forwarded to Klemm. Klemm testified that he had been unaware of the previous transfer of SOR duties or of any side letter on this subject. Klemm checked with the Union office and learned a copy of the SOR LOA was not in the Grand Lodge's files, had not be been sent to the Grand Lodge, and was never submitted to the membership for approval. Klemm also learned the SOR work had been transferred to management at ORD and SFO but not as yet at DEN or LAX.

On August 18, 2016, the Union filed the instant grievance alleging the replacement of tower SORs with non-Union employees violated Article 2 and LOA 9 of the Agreement [JX 3]. The remedy sought was to retain all SOR work under the Agreement [JX 3]. After the dispute

was unable to be resolved through the steps of the contractual grievance procedure, the grievance was duly appealed by the Union to arbitration herein. It is here noted that the Company suspended its plans to transition SOR work to management at DEN and LAX in light of the instant grievance.

At arbitration, the parties were afforded a full opportunity to call and cross-examine witnesses under oath, introduce documents, and present argument. A transcript of the proceedings was prepared. Upon receipt of post-hearing briefs, the matter was submitted to the Board for decision. No useful purpose is served by summarizing the entire record of evidence and argument, all of which has been carefully reviewed and considered. Rather, only those matters deemed necessary in deciding the termination at issue are discussed herein.

EXCERPT FROM THE AGREEMENT [JX 1]

ARTICLE 2. JOB SECURITY

A. Job Security

1. Contracting Out of Core Work

a. The Company will not contract out to outside vendor(s) the "core" work currently performed by Passenger Service employees at the following airports: Denver (DEM), Newark (EWR), Washington Dulles (IAD), Houston (IAH), Los Angeles (LAX), Chicago (ORD), San Francisco (SFO) [and other designated stations]. . . .

b. Except as provided in Letter of Agreement #9, non-core work currently performed by Passenger Service employees at these airports may be contracted out, provided it does not directly cause a reduction-in-force for employees employed as of the Effective Date of this Agreement at the airport(s)/locations(s) where the contracting out occurs.

ARTICLE 10. GENERAL & MISCELLANEOUS

A. Management and Operation of Business

1. Except as restricted by this Agreement, the Company has the sole and exclusive right to manage, operate, and maintain the efficiency of the business and working forces. . . .

2 The exercise of any right reserved herein to management in a particular manner, or the non-exercise of a right, will not operate as a waiver of the Company's rights, nor preclude the Company from exercising the right in a different manner. The rights enumerated

above will not be deemed to exclude other pre-existing rights of management, except as expressly provided in this Agreement.

S. Passenger Service work will be performed by employees covered by this Agreement. Supervisors and Managers should not perform Passenger Service work, except for incidental or occasional performance of such work to ensure the integrity of the operation. The Company and Union intend this to be limited to unique, unforeseeable, emergency, or other critical and safety -related situations, and that any such work performed be non-repetitive, short in duration and operationally critical, and where no hourly-rated employee could reasonably be anticipated to perform the task. . . .

T. Agreement. When this Agreement is accepted by the parties and signed by their authorized representatives, it will supersede any and all existing agreements and understandings, explicit or implicit, affecting the craft or class of employees covered by this Agreement. Any customs, employment policies or interim arrangements established prior to the date of this Agreement will not create any contractual or legal obligation to continue such customs, policies, or arrangements following the Effective Date of this Agreement.

LOA 9: JOB PROTECTIONS

April 4, 2016

[Addressed to Mike Klemm, District 141 President & Directing General Chairperson
from Thomas Reardon, United Director Labor Relations]

. . .

This confirms our understanding and agreement with respect to job protections and the contracting out of work. United hereby commits that, through July 1, 2034, the Company will not contract out any work currently performed by those IAM-represented United employees covered under the Passenger Service Employees and Fleet Service Employees collective bargaining agreements at all hub and station airport locations, including but not limited to:

- Work at stations as set forth under Article 2.A.1;

. . .

After July 1, 2024, the provisions of Article 2 in the collective bargaining agreements for the IAM-represented employees will remain in full force and effect, except to the extent modified by subsequent agreement.

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SOR LETTER OF AGREEMENT
ALIGNMENT OF OPERATIONS WORKGROUPS [UX 4]

November 1, 2013

[Addressed to Richard A. Delaney, District 141 President & Directing General Chairperson from Jeff Wall, United Vice President Labor Relations]

This confirms our understanding and agreement regarding the transition of certain Station Operation Representatives to Tower Controller management positions.

As we have discussed, the Company and the Union share mutual interests in optimizing the operational efficiency of the airline and aligning co-workers of the former subsidiary airlines in terms of job status, compensation and working conditions. To effectuate these ends in relation to specific operational personnel currently subject to the new joint collective bargaining agreements covering IAM-represented co-workers, we have agreed as follows.

United will transfer "tower control" work of certain airport-based station Operations Representatives in Chicago (ORD), Denver (DEN), Los Angeles (LAX), San Francisco (SFO) and Washington-Dulles (IAD) to management. United will post management level "Company Tower Controller" positions in these locations. Such positions require managerial responsibility and authority for effective interaction with airport operators, air traffic control, pilots and dispatch. This process will harmonize the responsibility of tower control work among the former United and Continental subsidiaries along the lines of the former Continental subsidiary model, where the job duties and responsibilities of tower controllers have traditionally been considered management functions. Consistent with former subsidiary Continental practice and structure, these management positions will not be included in nor eligible for inclusion in any represented craft or class or collective agreement. Please indicate your concurrence by signing one copy of this letter in the place indicated below, and returning it to the undersigned.

[Concurrence signed by Richard A. Delany]

POSITIONS OF THE PARTIES

The Union contends the transfer of SOR work violates Article 2.A.1. and LOA 9 of the Agreement. The Union asserts the SOR LOA authorizing a transfer of work never became effective because the Company could not have reasonably believed IAM representatives had any authority to bind the Union to the SOR LOA without membership ratification based on management's familiarity with IAM policy and its conduct during the 2012-2013 negotiations. Alternately, the Union maintains the SOR LOA is superseded by operation of the zipper clause in Article 10 T. because the LOA was not incorporated by the parties into the 2016 Agreement.

The Union argues the Company must not be rewarded for its pursuit of a path to avoid the requisite review and ratification of a proposal in clear breach of the Union's core objective in those negotiations to preserve work currently performed by its members. Accordingly, the Union seeks an order prohibiting the removal of any SOR work at DEN and LAX and restoring the SOR work at ORD and SFO.

In turn, the Company maintains the SOR LOA constitutes a valid agreement which expressly granted the right to transfer the tower control work to management at all s-UA hubs as accomplished in ORD and SFO with knowledge and without objection from the Union. The Company asserts it is not bound by the Union's internal policies regarding ratification and/or Grand Lodge approval. The Company disputes the claim the SOR LOA has been superseded by the 2016 Agreement because the provisions were never revoked and the parties intended the LOA to remain effective until the transitions were complete. Alternately, the Company argues the Union has failed to establish a transition of tower control work to management violates the Agreement because Article 2.A.1. and LOA 9 are only applicable to third party vendors and Article 10.S. does not apply to work which is not exclusive to the Union. The Company asserts the Union should be estopped from pursing this grievance and has waived its objection to SOR work transferred prior to the 2016 Agreement. The Company thus urges the grievance be denied in its entirety.

OPINION BY THE ARBITRATOR

The parties in this case are sharply divided over the ability of the Company to transfer tower control work performed by SORs at s-UA hubs to management. The Company maintains the 2013 SOR LOA expressly authorized such transfer and in any event the transfer does not violate any provision of the 2016 Agreement. The Union contends the transfer of this work is barred by Article 2.A.1 and LOA 9 of the Agreement and the SOR LOA relied upon by the Company is unenforceable because it was never duly adopted by the Union nor ratified by the membership. Review of the voluminous record of evidence and argument in this proceeding supports a finding the 2016 Agreement prohibits the transfer of SOR tower control duties at LAX and DEN but not SFO or ORD where the transfer of those duties occurred before the effective date of that Agreement. An award consistent with these findings will follow.

In any dispute over the interpretation and application of a provision in a collective bargaining agreement, the task of the System Board is to ascertain and apply the mutual intent of the parties. It is well settled the most reliable indicator of mutual intent is the words used by the parties in their labor contract. Where the terms of the disputed clause are clear, the Board must give full effect to the meaning of those terms. If the language is found to be ambiguous or susceptible to conflicting interpretations, the Board will look to other common indicators, such as bargaining history and past practice, to ascertain the mutual intent of the parties. Should all of these factors fail to reveal mutual intent, the Board must then determine the most reasonable interpretation of the disputed provision in light of all the circumstances presented.

The central facts leading up to the grievance are not in dispute. Tower control duties were performed by SORs at four s-UA hubs and by management at two s-CO hubs. After the merger, the Company determined those tasks should be harmonized at all hubs with the s-CO model. During negotiations of the 2013 Agreement, the Company drafted an LOA authorizing the transfer of SOR duties at s-UA hubs to management. The SOR LOA was agreed to and signed on behalf of the Union by PGDC Delaney on November 1, 2013. Although the SOR LOA was not included in the 2013 Agreement or sent to the Grand Lodge or membership for ratification, the Company relied on this letter agreement to implement the transfer. Preparations were announced, openings posted, and the transfer discussed with SORs and local Union leadership over a period of a year or two at ORD and SFO before being implemented prior to the effective date of the 2016 Agreement. The Company intended to transfer tower control duties to management at LAX and DEN, but those plans were repeatedly delayed due to other more pressing operational concerns. In October 2015, new leadership was elected by the IAM. PGDC Klemm and the bargaining committee were unaware of the existence of the SOR LOA, and the document was not raised or presented by the Company during negotiations of the 2016 Agreement. Thereafter, once Klemm learned of the transfer of SOR work and was informed of the SOR LOA, the instant grievance was filed contesting the validity of that letter and seeking restoration of the work to the bargaining unit.

The initial question is whether the transfer of this work violates the current Agreement. The answer is yes as such transfer is barred by the express terms of LOA 9. LOA 9 was agreed to by the parties during negotiations of the current Agreement and provides as follows:

> . . . through July 1, 2024, the Company will not contract out any work currently performed by those IAM-represented United employees covered under the Passenger Service Employees and Fleet Service Employees collective bargaining agreements at all hub and station airport locations . . . [JX 1].

As of the effective date of LOA 9 and the current Agreement, tower control duties were being performed by SORs at LAX and DEN. Thus, under the plain language of LOA 9, the Company is prevented from transferring the duties of those SORs to management without the concurrence of the Union.

Having found the transfer of SOR work violates the 2016 Agreement, the question becomes whether the transfer of the SOR duties was and/or is authorized by the SOR LOA dated November 1, 2013. The express purpose of that letter by its terms was to accomplish the disputed transfer of tower control duties with the concurrence of the Union. The Union argues the letter never became effective because it was not submitted to the Grand Lodge and membership for ratification as required by Union policy. Assuming internal Union policies required such review and ratification to become effective, the evidence in this case fails to persuade the absence of such process rendered the SOR LOA null and void.

The SOR LOA was discussed, agreed to, and signed by a representative from each party with authority to do so. If either the Company or Union needed to condition a given side letter on ratification by their respective constituencies, it was incumbent on that party to say so. There is no evidence such contingency was expressed or conveyed by either party in this instance. Nor was any explanation given on why the SOR LOA had not been forwarded to the Grand Lodge or membership for ratification if such had been necessary. Over two years elapsed after November 1, 2013, during which the transfer at ORD and SFO was openly discussed with SORs and Union representatives and ultimately implemented at those hubs. The Company relied on the validity of the SOR LOA as authority to accomplish the transfer, and no objections from the Union were voiced or received. Given the totality of these unique circumstances, the Union cannot be heard to complain the Company's undertaking consistent with the terms of the SOR LOA was void *ab initio*. Accordingly, a finding the transfer by the Company of SOR duties at ORD and SFO had been expressly sanctioned by the SOR LOA is manifest.

On the other hand, the record in this proceeding fails to establish the authority granted to the Company to transfer away bargaining unit work in the SOR LOA survived the 2016 Agreement. As discussed above, the parties agreed in LOA 9 on April 4, 2016, to prohibit the transfer of work "currently performed" by bargaining unit employees. As of that date, tower control duties performed by SORs at LAX and DEN had not been transferred to management. During negotiations of the 2016 Agreement, the Union requested from the Company all of the side letters it proposed to incorporate into the successor agreement. Nine letters were given to the Union, all of which were the subject of discussions across the table before being finalized in the 2016 Agreement. The SOR LOA was neither presented by the Company for inclusion with the other side letters nor discussed at the table. Had it been raised by the Company, the parties could have negotiated its survival. But that was not the case. The zipper clause in Article 10.T. expressly provides the 2016 Agreement "will supersede any and all existing agreements and understandings, explicit or implicit, affecting" the PSE unit. By failing to present the SOR LOA for continuation, the Company lost the opportunity to retain that authority in the 2016 Agreement.

The Company nevertheless maintains the SOR LOA was not extinguishable in light of the agreement on November 1, 2013, to transfer tower control work at all s-UA hubs, the fact the agreement was implemented at ORD and SFO, and that preparations and activity toward implementation were well underway at LAX and DEN prior to the effective date of the 2016 Agreement. Yet this contention must fail. There is no language in the SOR LOA providing that its terms could not be rescinded or revoked by a subsequent agreement. When adding LOA 9 to the Agreement, the parties precluded any further such transfer. No exception for the tower control work was requested or included in LOA 9, and Article 10.T. makes it clear the provisions of the 2016 Agreement supersede prior agreements to the contrary. The evidence of bargaining history is consistent with this result. The Union preconditioned participation in early and expedited negotiations for the 2016 Agreement on the preservation of the existing work and jobs for the term stated. The evidence confirms the Company understood and acceded to this demand by the Union in terms of a "snapshot" of the work then currently performed by bargaining unit members. There is no dispute the SOR duties at DEN and LAX remained with the bargaining unit when those understandings and agreements were reached. For these reasons, the transfer of tower control work at DEN and LAX cannot be effected

without Union concurrence in light of the plain language in LOA 9 and Article 10.T. of the Agreement.

In conclusion, the evidence at arbitration supports a finding the transfer of tower control duties performed by SORs in DEN and LAX violates the Agreement if accomplished without the consent of the Union. This finding does not, however, extend to the transfer of such work implemented in ORD and SFO prior to the effective date of the Agreement.

AWARD

1. The transfer of tower control work performed by SORs at ORD and SFO did not violate the Agreement, but a subsequent transfer without the consent of the Union at DEN and LAX would violate the Agreement.

2. The grievance is granted accordingly.

DATED: July 24, 2017
Santa Monica, California

FREDRIC R. HOROWITZ, Arbitrator

MICHAEL BEIRNE
Company Board Member
(Concur/Dissent)

ALEXANDER GERULIS
Union Board Member
(Concur/Dissent)

* I CONCUR WITH THE AWARD AS IT RELATES TO THE ORD AND SFO LOCATIONS.

* I DISSENT WITH THE AWARD AS IT RELATES TO THE DEN AND LAX LOCATIONS