BEFORE A BOARD OF ARBITRATION

In the Matter of the Arbitration Between:
US AIRWAYS, INC.

and

Grievance of the Union:
Violation of Section 26.
G.3 (24/25 Travel) MEC
Gr. No. 2014-050-30-99-02

ASSOCIATION OF FLIGHT ATTENDANTS-CWA

Before a Board of Arbitration:
M. David Vaughn,
Neutral Member
Alin Boswell,
Union-Appointed Member
Richard Knuth,
Union-Appointed Member
Paul Kinsey,
Company-Appointed Member
Michelle Peak,
Company-Appointed Member

OPINION AND AWARD

This proceeding takes place pursuant to Section 31 of the 2013-2018 Collective Bargaining Agreement (the "2013 US Air Agreement" or the "2013 Agreement") between US Airways, Inc.[1] (the "Company" or "Employer") and the Association of Flight Attendants-CWA (the "AFA" or "Union") (collectively, the Company and the Union are the "Parties" to the proceeding) to resolve a grievance which protests the Company's denial of travel benefits to certain retired flight attendants. The Company denied the grievance and the Union appealed the matter to arbitration.

Pursuant to the Parties' procedures, the dispute was presented to a System Board of Adjustment (the "Board") for which M. David Vaughn was selected as the Neutral Board Member, Alin Boswell and Richard Knuth as the Party-appointed Union Board Members and Paul Kinsey and Michelle A. Peak as the Party-appointed Company Board Members.

[1]Effective December 2013, US Airways was merged into American Airlines, Inc. The 2014-2019 Flight Attendants agreement (the "2014 AA Agreement" or the "2014 Agreement") is between American Airlines, Inc., and the Association of Professional Flight Attendants. (Co. Ex. 2) It became effective, replacing the 2013 US Air Agreement, on December 13, 2014. The JCBA negotiations team was comprised of representatives from both AFA and APFA. By agreement between them, AFA was allowed to take the instant dispute forward to hearing.

A hearing was convened in Dallas, Texas, on June 11 and 12, 2015, at which the Union was represented by Jeffrey A. Bartos, Esq., and the Company by Mark W. Robertson, Esq. In the proceeding, the Parties were each afforded full opportunity to present witnesses and documents and to cross-examine witnesses and challenge documents offered by the other. For the Union testified Flight Attendants Michael Flores and Roger Holmin, AFA Regional Representative Glenda J. Talley and retired Flight Attendant and Union Officer Judy Schmidt. Managing Director of Human Resources Cary Ulrich testified at the call of the Employer. All witnesses were sworn but none were sequestered. Joint Exhibit 1 ("J. Ex. 1"), Union Exhibits ("U. Ex. __") 1-24 and 26-28 and Company Exhibits ("Co. Ex. __") 1-3 were offered and received into the record. A court reporter was present at the hearing; by agreement of the Parties, the verbatim transcript (page references to which are designated as "Tr. __") which she caused to be prepared constitutes the official record of the proceeding. At the conclusion of the hearing, the evidentiary record was completed. The Parties submitted written post-hearing briefs. The record of proceeding was declared closed on August 10, 2015, after receipt of the last brief.

The Parties stipulated to the arbitrability of the grievance; and the Board finds it to be properly before it, ready for decision. This Opinion and Award is issued following review of the record and consideration of the arguments of the Parties. It interprets and applies the Agreement.

ISSUES FOR DETERMINATION

The Parties agreed, in general, to the issues for determination but not to specific wording. The Union proposed the statement of issues for determination as follows:

> Did the Company violate Section 26.G.3, of the AFA-US Airways Agreement when it unilaterally denied active

status boarding priority to all recipients of 25/45 passes beginning in September 2014? If so, what shall be the remedy?

The Company proposed its statement of the issues as follows:

> Did US Airways violate Section 26.G.3, of the February 28, 2013, Agreement when the merged airline moved certain former employees, including 25/45 Flight Attendants, into a lower boarding priority bucket? If so, what shall be the remedy?

The Board adopts the issue as proposed by the Union.

RELEVANT CONTRACTUAL PROVISIONS

Section 26 (Insurance, Retirement and Other Benefits), Sub-Section G (Passes), of the 2013 US Air Agreement (J. Ex. 1), in relevant parts, provides:

> 1. A Flight Attendant shall be provided on-line and interline pass benefits in accordance with Company policy unless otherwise provided for in this Agreement. These benefits shall include retiree travel . . . in accordance with Company policy. During the term of this Agreement, the Company shall not modify its pass policy to cap the number of times Flight Attendants, retired Flight Attendants, their spouses, eligible dependents and survivors, may utilize their space available travel privileges, to reduce their relative boarding priority with respect to other employee groups, or to otherwise substantially reduce this underlying benefit. This Paragraph shall not prevent the Company from making changes to the administration of the pass policy.
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> * * *
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> 3. 25/45 and Retiree Travel
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> A Flight Attendant who has completed twenty-five (25) years of service with the Company as a Flight Attendant and has attained the age of forty-five

(45) and who leaves the Company shall be eligible for on-line passes in accordance with Company policy as if she/he were still in an active status. For any medical leave commencing after the Date of Ratification of this Agreement, only the first five (5) consecutive years of any unpaid Medical Leave of Absence shall be credited for purposes of calculating the number of years of service to determine eligibility for 25/45 Retiree Travel. When a Flight Attendant under this Paragraph becomes eligible for and receives retirement benefits, she/he shall be eligible for other travel benefits that are effective under the retirement benefit program for Flight Attendants.

The Letter of Agreement between the Parties, attached to the 2013 US Air Agreement (U. Ex. 14), in relevant parts, provides:

C. **Voluntary Early Out Program**. Following the successful ratification of the New Tentative Agreement and a merger between American and US Airways Group, Inc. Completed during the AMR 2011 bankruptcy case or upon AMR's emergence from that bankruptcy ("Merger") that has been closed on a specified date pursuant to a Merger agreement ("Merger Completion Date"), US Airways will offer eligible Flight Attendants the opportunity to elect to participate in a Voluntary Early Out Program ("VEOP"), with the following terms:

1. **Eligibility**. To be eligible for the VEOP, a Flight Attendant must:

   a. have fifteen (15) or more years of Company seniority; and

   b. Be in active status (i.e., in regular active pay status with US Airways . . . and not on any other unpaid leave of absence) on the date the VEOP is first offered, and must remain in continuous employment with US Airways through and including the date on which the Flight Attendant is released pursuant to the VEOP.

2. **VEOP Benefits.** A Flight Attendant who meets the eligibility requirements listed in Paragraph C.1, above, will receive the following benefits if he/she elects to participate in the VEOP:

   a. A one-time lump sum $40,000.00 severance payment (less applicable taxes and withholding), payable following the Flight Attendant's release from employment pursuant to the VEOP (check to be issued no later than thirty (30) days following final normal paycheck issuance);

   b. Travel benefits consistent with the Flight Attendant New Tentative Agreement;

   c. For retirement-eligible Flight Attendants only, sick payout benefits in accordance with the terms of the New Tentative Agreement;

   d. Eligibility for COBRA benefits at Flight Attendant's expense in accordance with applicable law; and

   e. Payment for accrued, unused vacation at the rate provided for in the New Tentative Agreement.

FACTUAL BACKGROUND AND FINDINGS

The Parties

The Company is one of the largest airline carriers in the world, providing service throughout the United States and internationally. The Union represents a bargaining unit of the Company's Flight Attendants. The Parties have a long-standing collective bargaining relationship.

Bargaining History of the 25/45 Provision

The provision that has become known as the 25/45 Rule first became effective in the Parties' 1983-1984 collective bargaining agreement. Ms. Schmidt, the Union's lead negotiator at that time, testified that it was part of a compromise in which AFA yielded on the duration of salary continuance for injured employees and the Company agreed to the 25/45 Rule. (Tr. 24-26) The original provision, added to the prior agreement as Section 23, Sub-Section Y, of the 1983-1984 agreement, stated:

> [A] flight attendant who has completed twenty-five (25) years of service with the Company as a flight attendant and has attained the age of forty-five (45) and who leaves the Company shall be eligible for on-line passes in accordance with Company policy as if he/she were still in an active status. When a flight attendant under this paragraph becomes eligible for and receives retirement benefits, he/she shall be eligible for other benefits that are effective under the retirement benefit program for flight attendants. [U. Ex. 1]

That provision, except for its numeration, remained in effect and unchanged through six successor agreements. (U. Exs. 3-8)

It is undisputed that this was so even when the Company changed its travel policy, following its acquisition of America West Airlines, in 2006. In its revised Retiree Travel Guide (U. Ex. 11), the Company noted that, although the "boarding priority for Retirees is SA4P," it recognized that pre-merger US Airways flight attendants "have a contractual ability to travel SA3P as a retiree if they leave the company with 25 years of service and at least 45 years of age." In a letter to Mr. Flores dated January 19, 2006 (U. Ex. 9), the Company's Vice President of Labor Relations stated:

> This new policy is not intended to replace specifically bargained provisions contained in collective bargaining agreements. Where specifically bargained provisions exist, and where those provisions differ from the new

> merged travel policy, the bargained provisions will apply under the terms of that collective bargaining agreement.

Similarly, the Employer reaffirmed, in an undated Company-wide communication on the travel policy change (U. Ex. 10), that the 25/45 flight attendants are excepted from the revised policy because they "have a specific contractual right to board like active employees."

Ms. Talley testified that, throughout this period, the Company recognized that the 25/45 benefit was provided to qualified flight attendants for life. She testified, for example, that, in letters sent to flight attendants who had been on extended leaves of absence, US Airways affirmed that the then current agreement "stipulates that should a flight attendant reach 45 years of age and attain 25 years of service, they may separate from the Company and receive lifetime travel benefits as if they were active."[2] (U. Ex. 19) She further testified that the Parties agreed that the 25/45 benefit was a "lifetime travel benefit." (Tr. 95)

In 2007 and 2008, the Company implemented a voluntary separation program ("SEP Program). (U. Ex. 20) The SEP Program, which had available a total of 314 slots, allowed flight attendants to leave with a $20,000 payment and other benefits, including "Unlimited on/offline passes for employee and eligible family members [at] S3 (active) boarding status" based on Section 22.I of the then current (2005-2011) collective bargaining agreement covering 25/45 passes. (U. Ex. 8) A 2010 Voluntary Furlough with Limited Recall ("VFLR") program offered a similar travel benefit. (U. Ex. 21) Ms. Talley testified that, in settlements for disciplinary cases, the Resignation and General Release Agreement frequently - "about six or eight" times - included passes "if the

[2]The Notice of Separation, which was attached to these letters and required the retiring employee's signature, allowed the employee to select "the 25/45 program . . . I understand that I will receive unlimited on and offline travel privileges for myself and eligible family members at an S3 boarding priority [rather than S4]." (*Id.*)

person met the 25/45 eligibility requirement." (U. Ex. 18; Tr. 92–94)

The 2013–2018 US Air Agreement

The 2013 Agreement between US Air and APA/CWA covered the period from February 28, 2013, to February 27, 2018. The 25/45 Rule language from prior contracts remained in the 2013 Agreement with *de minimis* clerical changes[3] and the addition of one sentence that is of no relevance to the instant matter.[4] (J. Ex. 1, U. Ex. 13 and Co. Ex. 1)

In addition, the 2013 Agreement included a Voluntary Early Out Program ("VEOP"). (U. Ex. 14) Mr. Holmin testified that the VEOP was "the key" to getting the 2013 Agreement ratified by the bargaining unit. (Tr. 65) The VEOP included a one-time severance payment to participating flight attendants of $40,000, as well as "[t]ravel benefits consistent with the Flight Attendant New Tentative Agreement," *i.e.*, the 2013 Agreement. The Company, in its VEOP implementation packet (U. Ex. 15), stated that flight attendants "who participate in the VEOP . . . shall be entitled to . . . [o]n-line travel privileges pursuant with Company policy and Section 26.G of the Agreement at the time of release." In response to whether the Company's "merger with American [will] affect our current travel programs," the "Questions & Answers" section of the packet stated: "Travel privileges associated with the VEOP will be commensurate with Company policy and/or contractual specifications at the time of your VEOP release." Mr. Holmin testified that the Company drafted the VEOP implementation packet and that "the Company's interpretation of this sentence [was] consistent with" his interpretation, that is, that 25/45 benefits in effect at the

[3]These included reversing the previous reference to "he/she" to read "she/he" and changing references to "flight attendant" (*i.e.*, initial lower case) to "Flight Attendant" (*i.e.*, initial upper case).

[4]For flight attendants who went on medical leave after ratification, only the first five years of such leave will be counted toward the 25 years of service.

time a flight attendant left the Company would remain in effect without change. (Tr. 69)

Events Leading to Grievance

In December 2013, US Airways merged into American Airlines. By an *Arrivals* newsletter dated January 2, 2014 (U. Ex. 24), American announced that it would phase in changes to its travel policy during the year, including placing all legacy American retirees below active employees. Mr. Holmin testified that AFA repeatedly asked whether the Company intended any change with respect to the 25/45 group and that, each time, he "was told that they were going to honor our agreement. (Tr. 75) However, Mr. Holmin further testified that, in mid-2014, the Company told him "To go ahead and file the grievance, which indicated to me they weren't going to honor the agreement." (Tr. 77)

Grievance Process

By a letter dated August 6, 2014 (J. Ex. 1), Ms. Talley filed a grievance protesting "the Company's violation of Sections 26.G.3, and all related Sections of the Agreement when it stated its intent to no longer honor the 25/45 travel benefit effective August 19, 2014." As a remedy, the Union requested "that the Company immediately cease and desist all future violations of the applicable Sections of the Agreement."

By a letter to Ms. Talley dated November 12, 2014 (*Id.*), the Company denied the grievance, stating:

> As a result of the December 2013 merger between US Airways, Inc. and American Airlines, Inc., the Company has been engaged in integrating and harmonizing the two carriers' operations and policies. The changes to the Company travel policy which are the subject of the grievance resulted from this integration. The Collective Bargaining Agreement, when read as a whole confirms that the Company retains the right to amend its employee travel policy.

The Parties were unable to resolve the dispute through the steps of the negotiated grievance process; and the Union invoked arbitration. This proceeding followed.

2014 Company Communications

By a letter dated June 6, 2014 (U. Ex. 22), Flight Attendant Larry Scoby, who retired under the VEOP effective August 31, 2014, was advised that flight attendants "who meet the 25/45 provision will receive SA3 (active) boarding priority as opposed to SA4 (inactive)." Similarly, by a letter dated September 4, 2014 (U. Ex. 23), Flight Attendant Anna Boyce, who retired effective August 30, 2014, received the same information.

However, by a "Travel Privileges – FAQs" dated August 28, 2014 (U. Ex. 27), the Company announced that, effective September 10, 2014, it would institute changes to its non-revenue travel program. It stated that, "If you left either American or US Airways under a separation program and have travel privileges, then you will be boarding with other retirees," *i.e.*, after active employees. (p. 8) By an e-mail dated September 25, 2014 (U. Ex. 28), the Company informed recently retired Flight Attendant Anna Boyce that, as of September 10, 25/45 flight attendants would be grouped with retirees and below actives.

The 2014-2019 AA Agreement

US Airways and American Airlines merged in December 2013. Since flight attendants at the two airlines were represented by different collective bargaining representatives, the merged airline and the two unions negotiated a "Negotiations Protocol Agreement." Mr. Holmin signed the Negotiations Protocol Agreement on behalf of AFA on January 25, 2014. (U. Ex. 16) It is undisputed that, during negotiations for a new collective bargaining agreement, the 2013 Agreement remained in effect for US Air flight attendants. Negotiations for the successor agreement – the 2014 AA Agreement –

were completed on September 19, 2014, but did not take effect until December 13, 2014.

Mr. Holmin testified that, during the negotiations for a successor collective bargaining agreement, the Union proposed "retaining the 25/45 language . . . until the very last week . . . [when] it was taken out of the proposal." He conceded that the final 2014 AA Agreement does not contain the 25/45 benefit. He further testified that, during the negotiations, the Company never informed the Union that, "if the [2014 Agreement] did not contain 25/45, all those flight attendants who left the company earlier . . . would not have their rights to the 25/45 benefit." (Tr. 75) There is nothing in the evidentiary record indicating why the Union decided to drop the 25/45 language from its proposal.

According to the Company, retiree benefits for legacy US Airways retirees – including 25/45 retirees – is substantially improved under the current travel policy in other respects, including additional vacation passes, companion enrollment, travel dependents boarding at the retiree's boarding priority and a dramatically larger network of flights and destinations. (U. Exs. 24 and 26)

POSITIONS OF THE PARTIES

The positions of the Parties were set forth at the hearing and in their post-hearing briefs. They are summarized as follows:

The Union argues that the Company violated Section 26, Sub-Section G.3, of the Agreement when it unilaterally denied active status boarding priority to retirees eligible for 25/45 passes beginning in September 2014. It contends that the recent decision of *M&G Polymers, LLC v. Tackett*, 135 S.Ct. 926 (2015) ("*M&G Polymers*"), where the United States Supreme Court rejected the "*Yard-Man* inference" that retiree benefits vested for life, supports its position. It asserts, citing the Parties' Agreement and extrinsic evidence, that the Parties agreed that 25/45 benefits

were "lifetime" benefits, that the Company breached the Agreement and that this Board should award injunctive and compensatory remedies for all 25/45 flight attendants.

AFA further argues that the Company's reliance on *M&G Polymers* to defend its actions is misplaced. It maintains, as an initial matter, that the "*Yard-Man* inference"[5] and the *M&G Polymers* holding apply to the federal courts and that the role of labor arbitrators, as part of a system of self-government to interpret a collective bargaining agreement, is quite different from the role of a federal judge in an employee benefits contract case governed by ERISA. It contends, therefore, that it would be erroneous to blindly or rigidly apply a judicial standard to a bargaining dispute. The Union asserts, in addition, that, in *M&G Polymers*, the Supreme Court rejected the "*Yard-Man* inference" as contrary to "ordinary principles of contract law" because it "plac[ed] a thumb on the scale of vested retiree benefits in all collective-bargaining agreements." (p. 935)

The Union further argues that, in *M&G Polymers*, the Supreme Court unanimously upheld key principles of contract law, including that the parties' intentions control and that, where the words of a written contract are clear and unambiguous, its meaning is to be ascertained in accordance with its plainly expressed intent (p. 933); that the parties may prove through "affirmative evidentiary support" how "customs or usages in a particular industry . . . determine the meaning of a contract" (p. 935); that contractual obligations ordinarily case upon termination of an agreement unless the parties have agreed otherwise (p. 937); and that, "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life" (*Id.*). It points out that the four concurring Justices pointed out that nothing in the decision diminishes the traditional rule of contract interpretation that, "when a contract is

[5]*UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983).

ambiguous, a court may consider extrinsic evidence to determine the intention of the parties." (p. 938)

AFA further argues that *M&G Polymers* (p. 937) also reaffirmed that parties to a collective bargaining agreement can agree that certain benefits will survive the expiration of an agreement.[6] It maintains that *M&G Polymers* merely clarified that *evidence*, rather than judicially created inferences, must be the cornerstone of judicial analysis of whether or not rights are vested and therefore enforceable in the future. The Union contends, therefore, that M&G Polymers dealt with the federal common law of labor contracts in the ERISA context, not with the role of an arbitrator, that it neither overturned nor altered the federal court approach to labor contract interpretation, except to the limited extent it rejected the *Yard-Man* inference, and that, in any case, it does not seek to apply the *Yard-Man* inference to the instant matter.

The Union further argues, citing both the Agreement and extrinsic evidence, that the Parties agreed that 25/45 benefits were "lifetime" benefits, that is, good for the life of the 25/45 flight attendant who left the Company under that rule. It asserts that the agreed-upon language, interpreted through normal principles of contract interpretation, so provides, that any ambiguity is overwhelmingly resolved by the Company's own statements and actions since 1983 and that the Company provided no contrary evidence.

As to the contractual language, AFA points out that the contract, including the 2013 Agreement as well as preceding agreements back to 1988, states that 25/45 flight attendants would continue receiving the benefit ten or more years into the future, *i.e.*, beyond the duration of any collective bargaining agreement,

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[6]Citing *Litton Financial Printing v. NLRB*, 501 U.S. 190 (1991), where the Supreme Court held that "constraints upon the employer after the expiration date of a collective-bargaining agreement," may be found in both the express terms of the agreement, and also "from . . . implied terms of the expired agreement" (p. 203 and 207) and that "rights which accrued or vested under the agreement . . . will survive termination of the agreement" (p. 207).

citing both that there is no limitation on the duration of the 25/45 benefit and, more importantly, that there is an express acknowledgment that the 25/45 benefit will continue into the future, into retirement, which would be at least ten years away for a 45-year-old flight attendant.[7] It maintains that, at all relevant times, retirement benefits did not become available until age 55 and, citing authority, contends that linking "eligibility for a particular right 'to an event that would almost certainly occur after the expiration of the agreement,' – e.g. turning 65 or becoming eligible for Medicare – . . . 'signal[s] the parties' intent on continue . . . benefits notwithstanding expiration'" of a collective bargaining agreement.[8]

The Union further argues that the 25/45 benefit was accrued over time and, as an earned benefit, is vested. It contends, citing authority, that rights that can be "worked toward or accumulated over time" are assumed to be vested. It asserts that the benefit was "worked toward" and accrued over time, since the only way to be eligible was to have attained the age of 45 *and* completed 25 years of service.[9]

AFA points out that the 2013 Agreement states that the 25/45 benefit is *not* subject to change by Company policy and that 25/45 flight attendants were supposed to receive the travel benefits set forth in that Agreement if they took the VEOP. With respect to the

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[7]The Company points to the last paragraph of Sub-Section G.3, which provides: "When a Flight Attendant under this Paragraph becomes eligible for and receives retirement benefits, she/he shall be eligible for other travel benefits that are effective under the retirement benefit program for Flight Attendants."

[8]*Alday v. Raytheon Co.*, 693 F.3d 772, 785 (9th Cir. 2012); see also *In re AMR Corp.*, 508 B.R. 296, 319-20 (Bankr. S.D.N.Y. 2014), finding that early retirement benefit language in prior contracts linking ongoing benefits to future events such as age or Medicare eligibility is evidence of an intent to vest.

[9]*Cincinnati Typographical Union No. 3, Local 14519, CWA v. Gannett Satellite Information Network, Inc.*, 17 F.3d 906, 911 (6th Cir. 1994), where the holding did not rely on *Yard-Man*; see also *Chauffeurs, Teamsters & Helpers, Local Union 238 v. C.R.S.T., Inc.* 795 F.2d 1400, 1404 (8th Cir.) (*en banc*), *cert. denied*, 479 U.S. 1007 (1986).

former, the Union points out, citing Section 26.G.1, that the flight attendant travel benefits are generally subject to Company Policy "unless otherwise provided for in this Agreement" which, it maintains, confirms that the contractual right to 25/45 benefits was not subject to unilateral changes. As for the latter, the Union contends, citing Section C.2.b of the Parties' Letter of Agreement (U. Ex. 14), that a Flight Attendant "who meets the eligibility requirements . . . will receive the following benefits if he/she elects to participate in the VEOP: . . . b. Travel benefits consistent with the Flight Attendant New Tentative Agreement." It asserts that this contractual language affirms the agreement expressed elsewhere that the available benefits would be those in effect at the time when the flight attendant left the Company and were not subject to later change.

The Union further argues that, even if the Board finds plausible an alternative reading of the contractual language, that merely suggests that the language is ambiguous. It maintains, citing authorities,[10] that ambiguous language is resolved by review of extrinsic evidence and, in the instant matter, the abundant extrinsic evidence, most of which comes directly from the Company's own documents, supports its interpretation of the Agreement that the 25/45 benefit, once earned, is not subject to elimination.

AFA contends, as well, that, when the Company previously changed its overall travel policy following the America West transaction, it acknowledged that it lacked the prerogative to eliminate 25/45 priority for former flight attendants. (U. Exs. 9-11) It asserts, in addition, that, up to and including 2014, the

[10] 11 *Williston on Contracts* § 33-42 (4th Ed.), stating that "there is unanimity that the surrounding circumstances may be considered when ambiguity exists"; *Alaska Airlines and AFA*, No. 36-99-02-91-06, at 22 (Vernon, Arb.) (2007), stating that the contract language providing that the flight attendant insurance plan "shall provide benefits comparable to those offered under the . . . pilots' insurance program" was ambiguous and that ambiguity is resolved 'by review [of] the bargaining history and the history of contract administration"; *United Airlines and AFA*, No. MEC 1-88 (Seibel, Arb.) (1988), at 24, rejecting the company's interpretation of ambiguous contract language when the company's past actions under the contract were inconsistent with that interpretation.

Company repeatedly and specifically advised flight attendants that the 25/45 benefit, once earned, was "unlimited" and a "lifetime travel benefit" (U. Exs. 19–20 and 22) and, citing Ms. Talley's testimony (Tr. 94–95), that the Union and US Airways shared the understanding that the 25/45 benefits were "lifetime" in nature. Finally, the Union maintains, citing authority, that the Company's own 2013 "FAQ" document, which assured flight attendants that if they left the Company with 25/45 eligibility, they would have travel privileges "commensurate with . . . contractual specifications at the time," dispels any doubt as to the Agreement's meaning.[11]

Finally, AFA argues that, when the Company stopped providing 25/45 eligible flight attendants with the boarding priority to which they were entitled in September 2014, the 2013 US Air Agreement was still operative for all US Airways flight attendants and the 2014 AA Agreement was still being negotiated. It contends that the Company's sole defense – its reliance on the language that "the Company retains the right to amend its employee travel policy" (J. Ex. 1) – is without merit since the Company did not have such leeway as a matter of "policy" and, instead, was bound by the Agreement. It asserts that the Company's initial conduct in 2014 breached the Parties' Agreement in effect at the time, that, after the 2014 AA Agreement went into effect, the contractual rights of the 25/45 flight attendants accrued and were vested at the time they left the service of the Company, and that those rights, once accrued, were not affected by any terms in the 2014 AA Agreement.

For all of these reasons, the Union urges that the Board require that the Company, through issuance of injunctive relief, comply with the Agreement by restoring the flight benefits of the

[11] *AFA and Alaska Airlines, Inc.* No. 36-99-2-37-94 (Gaunt, Arb.) (1996), at 17, finding that the "Q & A document was distributed for the clear purpose of explaining how contractual changes would be applied. It . . . provides forceful evidence" of the parties' understanding of the contract language. The Union cites two other awards – *Marathon Petroleum Co.*134 LA 923, 927 (Lalka, Arb.) (2015), and *City of Chicago*, 117 LA 981, 990 (Wolff, Arb.) (2002) – where bargaining unit members relied on the company's Q&As.

25/45 flight attendants[12] and that it compensate qualified flight attendants for the loss of the 25/45 benefit for the period from September 2014 through the date of the Award. It urges, in addition, that the remedy apply to all 25/45 flight attendants, not just those who left service during the 2013 US Air Agreement

The Company argues that the Union failed to prove that it violated Section 26, Sub-Section G.3, of the Agreement when it denied active status boarding priority to all recipients of 25/45 passes beginning in September 2014. It contends that the Union concedes that the 25/45 benefit is not provided for in an effective collective bargaining agreement, *i.e.*, the 2013 US Air Agreement which contains Section 26.G.3, is no longer effective, and that the 2014 AA Agreement does not contain a grandfather provision regarding the flight attendants who left under that section. It asserts, in addition, that Section 26.G.3, did not provide for lifetime benefits that vested at the time the flight attendants left under that section of the 2013 Agreement.

The Employer further argues that, in *M&G Polymers*, the Supreme Court addressed the exact issue before this Board of whether a collective bargaining agreement that is no longer in effect can create an ongoing lifetime right to benefits. It maintains that, under *M&G Polymers*, it is possible to overcome the presumption that "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement" but only if the agreement provides "in explicit terms that certain benefits continue[] after the agreement's expiration," *i.e.*, it is not "silent as to the duration of retiree benefits." (p. 937) The Company contends that, in the instant matter, the Union cannot overcome the presumption because Section 26.G.3, does not contain explicit language indicating that it was meant to continue after the expiration of

[12]*Marathon Petroleum Co.*, 134 LA 923 (Lalka, Arb.) (2015), where the company was ordered to cease and desist from hiring without posting bids pursuant to the parties' collective bargaining agreement, and *Imerys Perlite*, 134 LA 40 (Landau, Arb.) (2014), where the company was ordered to cease and desist from canceling employees' vacation without rescheduling them for the same calendar year.

the 2013 Agreement. It asserts that, even if the Board determined that the relevant language were ambiguous with respect to lifetime benefits, the Board may "not construe ambiguous writings to create lifetime promises[13] and that, therefore, the grievance should be denied.

The Company further argues that, since the disputed provision is not ambiguous and does not provide for lifetime benefits, the Board should not consider the Union's extrinsic evidence and that, in any case, the extrinsic evidence is irrelevant to the issue. As to ambiguity, the Employer maintains that, prior to *M&G Polymers*, courts would generally consider extrinsic evidence on the issue of whether benefits were intended to vest for life without explicit language to that effect, so long as the language was ambiguous as to whether lifetime benefits were intended. It contends that, even in those cases, ambiguous language sufficient to warrant consideration of extrinsic evidence typically included words such as "life," or "lifetime" or "until death."[14] The Company asserts that, since the disputed language at issue here permitted the Employer to change (or even terminate altogether) travel benefits

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[13] *M&G Polymers*, at 936. See also *Fulghum v. Embarq Corp.*, No. 07-2602, 2015 U.S. Dist. LEXIS 76141, at *206 (D. Kan. June 10, 2015), holding that "Plaintiffs do not identify any clear or express language promising lifetime insurance benefits," and *Zanghi v. Freightcar Am., Inc.*, No. 3:13-146, 2015 U.S. Dist. LEXIS 41810, at *28, 47 (W.D. Pa. March 30, 2015), finding that "Words such as 'shall remain' and 'will continue' in the collective bargaining agreement are not sufficient to unambiguously indicate that benefits will continue ad infinitum."

[14] *Bland v. Fiatallis N. Am., Inc.*, 401 F.3d 779, 784-85 (7th Cir. 2005), where "coverage remains in effect as long as you or your surviving spouse are living"; *Abbruscato v. Empire Blue Cross & Blue Shield*, 274 F.3d 90, 97 (2nd Cir. 2001), where, "If you have at least 5 years of vested service in the pension plan and your age plus completed years of service . . . equal 65 or more, you are eligible for lifetime health insurance and life insurance coverage"; *Int'l Ass'n of Machinists & Aerospace workers v. Masonite Corp.*, 122 F.3d 228, 232 (5th Cir. 1997), where "Employees retiring at age 62 or later . . . will be entitled to comprehensive medical expense insurance benefits for themselves and their covered dependents until the death of the retired employee"; *Berg v. empire Blue Cross & Blue Shield*, 105 F.Supp.2d 121, 127 (E.D.N.Y. 2000), where "50% of your life insurance coverage remains in force for the rest of your life, at no cost to you"; and *United Rubber, Cork, Linoleum & Plastics Workers v. Pirelli Armstrong Tire Corp.*, 873 F.Supp. 1093, 1098, 1100(M.D. Tenn. 1994), where "the payment of such Benefit shall continue until the individual's death."

for active employees by changing its travel policies, and those same changes would apply to the 25/45 retirees, there is no ambiguity to suggest that these are permanent, lifetime benefits, but quite the opposite, *i.e.*, that any travel benefits the 25/45 retirees were to receive were subject to change at the Company's discretion by changing active flight attendants' travel benefits. It maintains that extrinsic evidence should not be considered because Section 26.G.3, does not suggest that the travel benefits were immutable and that the 2014 AA Agreement eliminated active employee travel benefits for the 25/45 retirees.

The Employer further argues that, even if the extrinsic evidence were to be considered, that evidence – the testimony of AFA witnesses – is irrelevant because it does not support the Union's claim that lifetime benefits vested when pre-2014 employees left the Company. It contends, for example, that Ms. Schmidt's testimony does not speak to whether the Company was prohibited from modifying the travel benefits available to flight attendants who retired prior to the expiration of the 2013 Agreement. It asserts that, in fact, Ms. Schmidt's testimony advanced the Company's position because she was unable to offer any evidence that there was any discussion at the table suggesting, or even implying, that the 25/45 provisions in the original 1983 collective bargaining agreement or the subsequent 1984 agreement was intended as a lifetime benefit, because the "highlights" document (U. Ex. 2) did not suggest or imply that the 25/45 provision in the 1983 agreement provided for lifetime benefits or that she told flight attendants at the road shows that it was a lifetime benefit.

The Company further argues that the testimony of Ms. Talley and Messrs. Flores and Holmin are similarly irrelevant. It maintains that it agrees with all of Mr. Flores's testimony, *i.e.*, that the 25/45 provision was a contractual obligation, that it tried to get the language out of the collective bargaining agreement during 2007 negotiations but that it was successful in doing so in 2014 negotiations, that the Company honored the 25/45 provision when it was in effect and that the Company's obligations

ceased when the Parties agreed to remove that language from the current agreement.

The Employer further argues that Mr. Holmin's testimony confirmed that the disputed provision was a contractual right and that the Union attempted to retain the 25/45 provision in the 2014 AA Agreement but was unsuccessful in doing so. It contends that there was no need for the Company to tell the Union during negotiations, as Mr. Holmin suggested, that, if the 2014 Agreement did not contain Section 26.G.3, pre-existing flight attendants would no longer have the benefit because it announced the change in January 2014, the Union filed its grievance in August 2014, and the new policy went into effect on September 10, 2014 – all before negotiations over the 2014 AA Agreement concluded. The Company asserts that the fact that the Union filed its grievance while negotiations for the 2014 Agreement were ongoing confirms that, if the Union wanted to retain the 25/45 benefit for pre-existing retirees, it should have negotiated a grandfather provision as it did for other benefits. It maintains, citing authority, that the Union should not be allowed to obtain in arbitration what it failed to obtain in negotiations.[15]

As for Ms. Talley's testimony, the Company argues that the exhibits she introduced merely describe the 25/45 benefit at a time when the benefit was provided for by a collective bargaining agreement – including a single document (U. Ex. 19) which uses the word "lifetime" when describing to a bargaining unit member the 25/45 program in effect under the 2005-2011 collective bargaining agreement – and do not go to the question before this Board. It contends that a single document, over the course of the 31 years that the 25/45 provision was in the various collective bargaining agreements, written by a supervisor regarding an agreement not at issue in the instant matter is inadequate to satisfy the Union's burden and, in any event, individual communications and agreements

[15] *Columbia Hosp. for Women*, 113 LA 980, 986 n. 1 (William Hockenberry, Arb.) (1999), rejecting the union's interpretation.

with individual flight attendants cannot answer the question of whether the 2013 US Air Agreement provides for lifetime benefits because, under the Railway Labor Act, a carrier cannot make individual agreements with represented employees that supersede a collective bargaining agreement.[16] The Employer asserts, therefore, that, although evidence regarding discussions at the table for the 2013 Agreement, of which there was none, would be relevant, evidence regarding agreements with individual flight attendants is irrelevant.

Finally, the Employer argues that, even if the Board does not deny the grievance entirely, only the alleged violation of the 2013 US Air Agreement is at issue before the Board and, thus, any remedy must be limited to the 310 flight attendants who left the Company under the 2013 Agreement. It maintains that the August 2014 grievance and the submission of the grievance to this Board specifically allege violation of the "Agreement" and that, in the latter, the Union defines the "Agreement" as the 2013 US Air Agreement. It contends that, similarly, the submission to the Board states the issue as an alleged violation of the 2013 Agreement. The Company asserts, citing authorities, that the statement of the issue, along with the collective bargaining agreement, defines an arbitrator's jurisdiction and an award that "answers questions that were not fairly posed by the issue may be vacated in later court proceedings for going beyond the arbitrator's authority."[17] It maintains that, since only a

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[16]*Order of R.R. Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 347 (1944). See also *Wyatt v. United Airlines, Inc.*, No. 7:13-CV-282-F, 2014 U.S. Dist. LEXIS 112202, at *12 (E.D.N.C. August 13, 2014), holding that "It is well settled that an airline may not make individual agreements with employees that supersede the [collective bargaining agreement]."

[17]Elkouri and Elkouri, *How Arbitration Works*, 7th Ed. (BNA, Washington, D.C., 2012) ("*Elkouri*"), pp. 7-7 and 7-8. See also John Kagel, *Practice and Procedure, in the Common Law of the Workplace: The Views of Arbitrators* § 1.20 (Theodore J. St. Antoine ed., 2005), providing that an award may be vacated "for going beyond the arbitrator's authority to bind the parties by the award"; *Van Horn v. Van Horn*, 393 F.Supp.2d 730, 752 (N.D. Iowa 2005), providing that "[a]n arbitrator exceeds his power . . . when the arbitrator's decision encompasses issues not properly submitted to arbitration"; and *Roadway Package Sys., Inc. v. Kayser*, 257 F.3d 287, 300-302 (3rd Cir. 2001), vacating an award because the

violation of Section 26.G.3, of the 2013 US Air Agreement was alleged both in the grievance and in the issue framed by the Union for this Board's consideration, only the entitlement of the 310 flight attendants who left the Company under that provision of the 2013 Agreement is at issue in this case and can be resolved by this Board.

For these reasons, the Company urges that the grievance be denied.

DISCUSSION AND ANALYSIS

It was the Union's burden to prove by a preponderance of the evidence that the Company's actions violated the Parties' Agreement. For the reasons which follow, the Board is convinced that the Union met its burden in part and failed to do so in part.

Contract Interpretation

The Board's task in contract interpretation disputes is to ascertain and apply the mutual intent of the parties. That intent is best determined by looking to the language to which they agreed. The parties are assumed to have intended the normal and customary meaning of the language they negotiate and to have intended the consequences of that language. It is a principle of contract interpretation that, if the words contained in contract language are clear and unambiguous, conveying distinct terms, there is no need to go outside the four corners of the document. The sources of contract interpretation include the language of the contract and, to the extent the language is ambiguous, pre-contract negotiations, bargaining history, course of dealing and past practice.

Agreement language is not ambiguous if its meaning can be determined without reference to anything other than a knowledge of

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arbitrator decided a different issue than the issue presented by the parties.

the simple facts on which, from the nature of language in general, its meaning depends. In determining the intent of the parties, the task is to determine what the language meant to the parties when it was written. It is that meaning, not a meaning that might possibly be read into the language, that must be given effect.

Ambiguity in contract language may be found in a variety of contexts, including incompleteness. In such instances, resort to extraneous means to ascertain meaning may be necessary, including the origin and history of the contract language at issue, the manner in which the Parties have themselves interpreted and applied the language and practices which have developed to fill in gaps in the language. In cases where a collective bargaining agreement is silent with respect to a given activity, the presence of a well-established practice, accepted or condoned by both parties, may constitute in effect, an unwritten principle on how a certain type of situation should be treated.

The Parties are each entitled to the benefit of the bargain they have mutually reached. That bargain is represented by the entirety of the Agreement. By virtue of the Agreement, the Parties agreed to honor their commitments and employees are entitled to have those commitments enforced. In the instant case, the Agreement is far from silent on the disputed issue. Indeed, for more than 30 years, each of the Parties' collective bargaining agreements included an identical provision providing that every flight attendant "who has completed twenty-five (25) years of service with the Company as a flight attendant and has attained the age of forty-five (45) and who leaves the Company shall be eligible for on-line passes in accordance with Company policy as if he/she were still in an active status." The 2013 US Air Agreement contains the same language, albeit with the words "flight attendant" capitalized and the words "he/she" reversed.

However, the protracted period of time during which that language appeared essentially unchanged in the Parties' agreements – from 1983 up to and including the 2013 Agreement – does not

necessarily make the language clear and unambiguous. The Parties appear to agree, and the Board is persuaded that the language is, for the most part, clear and unambiguous. However, the phrase "in accordance with Company policy" leaves some room for interpretation and the Parties have done their best to interpret it to their own benefit. Reference to the policy does not state the time of the policy or whether the language includes any subsequent changes in that policy. The Company contends, in the larger view, that the language is not ambiguous because it *clearly* does not contain language suggesting that the 25/45 benefit is a "lifetime" benefit. The Union contends that the language is clear and unambiguous and that it supports the Union's interpretation. To the extent that the Company offers a different interpretation, argues the Union, it at most reflects an ambiguity.

The Board is not persuaded, as the Employer would have it conclude, that *M&G Polymers* is dispositive of the grievance. As an initial matter, the Board notes that the decision in that case involved an interpretation of the application of ERISA benefits. It is undisputed that ERISA does not apply to airline travel benefits. In any case, ERISA benefits are a creation of federal law; the 25/45 benefit in the instant matter is solely the creation of the Parties' collective bargaining agreement.[18] Additionally, it is undisputed that the holding in *M&G Polymers* still permits courts (and, by analogy, Boards of Arbitration) to consider extrinsic evidence when a contract is ambiguous.

[18]Justice Thomas noted that *M&G Polymers* "is about the interpretation of collective-bargaining agreements that define rights to welfare benefits plans," that "LMRA grants federal courts jurisdiction to resolve disputes between employers and labor unions about collective-bargaining agreements" and that, [w]hen collective-bargaining agreements create pension or welfare benefits plans, those plans are subject to rules established in ERISA." Justice Thomas defines pension plans as "plans, funds, or programs that 'provid[e] retirement income to employees' or that 'resul[t] in a deferral of income," and welfare plans as "plans, funds, or programs established or maintained to provide participants with additional benefits, such as life insurance and disability coverage" and notes that ERISA treats the two types of plans differently. There is nothing in the evidentiary record that proves, or even suggests, that the benefits at issue in the instant matter are covered at all by ERISA.

The Board is persuaded that the sentence at issue is, indeed, ambiguous in so far as the meaning of the phrase "in accordance with Company policy." The Company contends that, since Section 26.G.3 does not contain any language suggesting that the 25/45 benefit is a "lifetime" benefit, it is not ambiguous. That is, in fact, the issue that the Board must determine. However, the Company also argues that the phrase "in accordance with Company policy" leaves it free to "change (or even terminate altogether) travel benefits for active employees [simply] by changing its travel policies, and those same changes would apply to the 25/45 retirees." (PHB, p. 13) The Board is not persuaded.

Absent specific restriction, Management retains the right to establish and enforce policies and procedures that enable it to carry out its managerial responsibilities. However, neither that right nor the phrase "in accordance with Company policy" gives Management the right, as the Company would have this Board conclude, to eliminate unilaterally a bargained-for provision. As an initial matter, policies that are unilaterally created by management may not contradict the collective bargaining agreement. In addition, it is well established that, when one interpretation of an ambiguous term will lead to an absurd or nonsensical result, and an alternative interpretation which is equally plausible will lead to a just and reasonable result, the latter interpretation will be used. (*Elkouri*, Sixth Ed., pp. 470-471) In the instant matter, the Company's contention – that it was free to negotiate a contractual provision on one day and eliminate it – by fiat, *i.e.*, by policy change – the next day, would lead to an absurd or nonsensical result. The Board is persuaded that a more plausible interpretation of Section 26.G.3 is that it links the flight attendants' right to the 25/45 benefit to the "Company policy" that was in effect at the time the collective bargaining agreement was negotiated. Thus, Section 26.G.3 of the 2013 US Air Agreement preserved the right of employees to the 25/45 benefit, "in accordance with Company policy." The Board notes, in this regard, that prior statements of Company policy recognized the 25/45 benefit as contractual. A unilateral change in such a right is a

violation of the applicable contract, absent specific authority granted by that contract.

Lifetime Benefit

The operative language of Section 26.G.3 is ambiguous. Thus, it is permissible to consider extrinsic evidence. The Union contends that, in addition to the 2013 Agreement, the extrinsic evidence confirms that the 25/45 benefit, once earned, is not subject to elimination. In support of its argument, the Union cites the Company's travel policy after it acquired America West; the Questions & Answers section of the 2013 VEOP packet; and letters to individual retirees. The Board is not persuaded.

With respect to the new travel policy after the merger with America West, the Employer merely reaffirmed that 25/45 flight attendants were excepted from the revised policy because they "have a specific contractual right." Similarly, with respect to the 2013 VEOP, the Company acknowledged that flight attendants who participated in that program were entitled to the 25/45 travel privileges "commensurate with Company policy and/or contractual specifications at the time of your VEOP release." Finally, the three cited letters repeated the contractual provision available to them. The Board is persuaded, notwithstanding Ms. Talley's testimony that the 25/45 benefit was a "lifetime travel benefit" and the Union's argument (PHB, p. 6) that, "[t]hroughout the period 1983–2014, the Company recognized and reaffirmed, in numerous individual and class-wide communications, that these benefits were good for life, and were not subject to change," in fact, the *only* document which states that the 25/45 travel benefit is a "lifetime" benefit is the Company's October 12, 2007, letter. (U. Ex. 19) The Board is not persuaded that this single reference to a "lifetime" benefit is sufficient to demonstrate that the Parties' intent over the last 30 years was to provide a lifetime 25/45 travel benefit.

There is no dispute that the 2013 US Air Agreement, as well as each of its predecessors back to 1983, provided a 25/45 travel

benefit. It was a contractual benefit which the Parties repeatedly incorporated into successor agreements. The Board finds that the 25/45 benefit remained in place so long as the collective bargaining agreement which provided it remained in effect. However, the Union failed to prove that this benefit, contractually or otherwise, represented a lifetime benefit for eligible flight attendants.

The Company changed its travel policy beginning in January 2014 and, it is undisputed, implemented those changes on September 10, 2014. The Board finds, however, that, on both dates, the 2013 US Air Agreement, which provided for a 25/45 benefit, was still in effect for US Air flight attendants. It was not subject to elimination by the Company through unilateral changes in policy. Thus, the Board finds that, beginning on September 10, 2014, when the Company implemented changes to the travel policy that negatively affected the 25/45 benefit, it violated the 2013 Agreement.

The 2014 AA Agreement

Section 26.G.3 of the 2013 Agreement was ambiguous, and the extrinsic evidence helped to determine the intent of the Parties. However, the 2014 AA Agreement does *not* include the 25/45 benefit. The proposal which would have continued it was intentionally withdrawn by the exclusive representative. Thus, it is clear and unambiguous with respect to the elimination of that benefit, the prior individual letters to retired flight attendants notwithstanding. It is undisputed that the Parties discussed the issue of 25/45 passes during the negotiations leading to the 2014 AA Agreement. As indicated, Mr. Holmin conceded that the Union insisted on maintaining that provision until the last week of negotiations, at which point, that proposal was dropped.

There is nothing in the evidentiary record indicating why the APFA decided to take out the 25/45 language from its proposal. According to the Company, retiree benefits for legacy US Airways

retirees – including 25/45 retirees – is substantially improved under the current travel policy in other respects, including additional vacation passes, companion enrollment, travel dependents boarding at the retiree's boarding priority and a dramatically larger network of flights and destinations. (U. Exs. 24 and 26) There is no dispute that the APFA, by its choice, did not continue to press the issue or, at least, try to grandfather the provision for prior retirees. The final version of the 2014 Agreement, which went into effect on December 13, 2014, does not contain a 25/45 provision *and* does not contain a provision "grandfathering" pre-existing 25/45 flight attendants.

Furthermore, it is undisputed that the Parties' negotiators knew how to enable pre-existing benefits to survive the termination of a collective bargaining agreement. For example, in a letter of understanding dated December 13, 2014, and attached to the 2014 AA Agreement, the Company's Managing Director of Labor Relations agreed that, although the retirement benefit plan provisions of the prior collective bargaining agreement governing the employment of the American Airlines flight attendants would be superseded by the new agreement, "the parties agree 'existing Plan participants' will be paid in accordance with the terms of the Plan as provided for in Article 36" of the prior collective bargaining agreement between American Airlines and the APFA. (p. L7-1) The Parties jointly, and freely, negotiated the pre-existing 25/45 provision and mutually agreed *not* to include it in the successor agreement. As a result of those negotiations, the pre-existing 25/45 benefit, which was a creature of collective bargaining agreements back to 1983, ceased to exist as of December 13, 2014.

The Board finds of no consequence the Union's contention that the Company failed to inform it that, if the 2014 Agreement did not contain the 25/45 provision, prior retirees would not have that benefit. The Parties are expected to understand the consequences of their actions. Additionally, the Board does not have to determine *why* APFA decided to do what it did. The fact is that,

for whatever reason, the APFA agreed to allow the 25/45 benefit provision to be eliminated from the new agreement.

Thus, the Board finds that, when the Parties' AA Agreement was implemented on December 13, 2014, the Company ceased to be in violation of the 2013 US Air Agreement.

Conclusion

The 25/45 benefit was recognized and memorialized in the Parties' successive agreements *and* then-existing Company policies, beginning in 1983. The benefit remained in the 2013 Agreement. The Union proved that the Company violated the 2013 US Air Agreement when it ceased providing 25/45 benefits to all qualified former flight attendants, including those flight attendants who retired under prior collective bargaining agreements. The record establishes that, although the Company changed its travel policy somewhat earlier, it did not cease providing 25/45 benefits to eligible flight attendants until September 10, 2014.

When the 2014 AA Agreement became effective on December 13, 2014, the Company ceased to be in violation of the 2013 Agreement with respect to the 25/45 benefit as the Agreement was no longer in effect and the successor agreement did not contain the 25/45 benefit. The Award so reflects.

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A W A R D

The grievance is sustained in part and denied in part. The Union proved that, between September 10 and December 12, 2014, the Company violated the Agreement by failing to provide 25/45 benefits to eligible flight attendants.

The matter is remanded to the Parties to give them an opportunity to design an appropriate remedy to compensate those former employees who were affected by the Company's violation.

The Board will retain jurisdiction over questions of remedy and implementation of the Award for a period of 90 calendar days from the date of issuance of the Award. The Board's jurisdiction is subject to extension on written request by either Party.

Issued at Clarksville, Maryland this 22nd day of October, 2015.

M. David Vaughn,
Neutral Member

Alin Boswell,
Union-Appointed Member

Paul Kinsey
Company-Appointed Member

Richard Knuth,
Union-Appointed Member

Michelle Peak
Company-Appointed Member