

In the Matter of the Arbitration Between:

ASSOCIATION OF
PROFESSIONAL FLIGHT ATTENDANTS

AA/APFA Reopener

AND

AMERICAN AIRLINES INC.

Hearings held January 5-7, 2017

Before the Arbitration Board

Richard I. Bloch, Chair
Roberta Golick, Neutral Member
Joshua M. Javits, Neutral Member
Lucretia Guia, AA, Board Member
Michelle Peak, AA, Board Member
Marcus Gluth, APFA, Board Member
Alin Boswell, APFA, Board Member

APPEARANCES

For the Association

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For the Company

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OPINION

FACTS

In December 2014, an Arbitration Board issued its Interest Arbitration Award setting the terms for a Joint Collective Bargaining Agreement (JCBA) between American

Airlines and the Association of Professional Flight Attendants to be effective December 13, 2014. Paragraph 3 of that award provided:

In the event United implements an initial flight attendant joint collective bargaining agreement after the American JCBA is implemented, the company and the certified collective bargaining representative(s) of the flight attendants in the service of the Company shall determine how the initial United joint collective bargaining agreement affects the “market-based in the aggregate” analysis for the American JCBA. Such determination shall be conducted in accordance with Section B(5) of the 2014 Negotiations Protocol Agreement Among American Airlines, Inc., US Airways, Inc., The Association of Professional Flight Attendants, and the Association of Flight Attendants.

This portion of the award echoed terms contained in the parties’ January 24, 2014 Negotiations Protocol Agreement (NPA). The parties to that Agreement were – on the Company side – American Airlines and US Airways (which became one company following the formal merger), and – on the Association side – the Association of Professional Flight Attendants and the Association of Flight Attendants (which became one organization, APFA, after the merger). The NPA established the procedures to arrive at a JCBA applicable to all APFA/AFA flight attendants. These procedures included a timeline for negotiations and mediation, followed, if necessary, by an Interest Arbitration to resolve any outstanding disputes, including, but not limited to disputes regarding economic valuation. The NPA procedures also included a provision to address the possibility (which became the reality that brings us to this dispute) that United Airlines, one of the market comparators, would implement an initial JCBA *after* the American JCBA was already in place. Both unions and the companies agreed to the NPA and how to implement its procedures.

In preparation for the negotiations, the parties designated their respective subject matter experts to work together to calculate a “market-based in the aggregate” standard for use as a comparator when costing the American JCBA and as a touchstone should the parties resort to interest arbitration to formulate the JCBA.¹ Over the course of several months, the experts jointly developed a Model that included inputs and assumptions to assess the value of the pre-merger US Airways and American flight attendant CBAs. The Model also contained values for the then-current external market – Delta, United, and Continental, as named in the NPA. The final version of the Model, by consensus of the experts, included inputs for 3% annual increases at Delta to cover the out-years for the duration of the American JCBA (through 2019).²

Although the parties reached a tentative American JCBA in September 2014 in accordance with the bargaining process set forth in the NPA, the tentative agreement failed to ratify, thus triggering the NPA’s Interest Arbitration procedures. In preparing for the arbitration, the parties crafted Procedural Rules that incorporated NPA Paragraph B.6 as dictating the arbitral standard. They agreed:

- A. Taking into account the tentative agreements/resolved sections reached by the Parties and the final proposals made by the Parties on the unresolved sections, the Panel shall form a JCBA that, as a whole, has a total economic value that:
 1. Is equal to “market-based in the aggregate,” and
 2. As applied to pre-merger American Flight Attendants, has a total economic value which is greater than the total economic value of the

¹ The phrase “market-based in the aggregate” appeared for the first time in the so-called Conditional Labor Agreement of April 2012, negotiated by US Airways and American’s pre-merger APFA. The CLA was conditional upon a merger taking place in the future and conditioned on APFA becoming the certified representative of the combined post-merger flight attendant group, both of which subsequently occurred.

² Because Delta is not covered by a CBA, modeling for the out-years was based on an examination of what Delta had historically provided annually. The 3% imputed annual increases for Delta raised the market-based in the aggregate calculation by \$21 million per year, from \$91 million to \$112 million.

- American Airlines CLA as applied to pre-merger American Flight Attendants; and
3. As applied to pre-merger US Airways Flight Attendants, has a total economic value which is greater than the total economic value of the US Airways CBA as applied to pre-merger US Airways Flight Attendants.³

At the time of the December 2014 Interest Arbitration hearings, no United-AFA JCBA had yet been implemented. Accordingly, the “market-based in the aggregate” standard for the Interest Arbitration was based on the United Airlines-AFA collective bargaining agreement, the Continental Airlines-AFA collective bargaining agreement, and the Delta Work Rules. On the threshold of that Arbitration, the parties agreed that the market-based in the aggregate analysis resulted in a \$112 million annual incremental cost above the then-current American and US Airways collective bargaining agreements. The \$112M figure included the value of imputed 3% annual increases for Delta through 2019. The Award in the Interest Arbitration noted the constraints on that Board’s authority: “The market-based average of \$112 million represents, substantively and procedurally, a strict prohibition on the Board’s authority to enhance the economic terms of the prospective deal. Otherwise stated, we can change the shape of the pot, but, in accordance with the market-based standard, we cannot sweeten it.”

³ As for the “market-based in the aggregate” standard applicable to the Interest Arbitration, the parties agreed: [referring generally to Paragraph 3 of the NPA]:

- A. If an initial United-AFA joint collective bargaining agreement has been implemented at the time of the arbitration, the “market-based in the aggregate” standard shall be based on the United Airlines-AFA joint collective bargaining agreement, and the Delta Air Lines Flight Attendant terms and conditions of employment contained in the Delta Airlines Flight Attendant Work Rules effective April 1, 2014 (the “Delta Work Rules”). Or, if no initial United-AFA joint collective bargaining agreement has been implemented at the time of the arbitration, the “market-based in the aggregate” standard shall be based on the United Airlines-AFA collective bargaining agreement, the Continental Airlines-AFA collective bargaining agreement, and the Delta Work Rules.

Subsequent to the December 2014 Arbitration award, American offered, and APFA accepted, three voluntary wage increases for flight attendants. On December 18, 2014, the Company offered to restore the lost value of the TA that had failed to ratify; this injected \$82 million above the \$112 million value to the JCBA. In exchange, the APFA entered into a letter agreement that the United Reopener outlined in Paragraph B.5 of the NPA would be confined to upward adjustment of the JCBA wage scales, and would leave unchanged other portions of the American/APFA JCBA.⁴ Then, on December 24, 2014, the Company provided a 4% wage increase. Finally, effective April 1, 2016, the Company provided a 6% wage increase in anticipation of United eventually concluding a JCBA with its flight attendants. At that time, the parties entered into a letter agreement, which provided: “In the event that a new flight attendant JCBA at United requires an additional upward adjustment to the attached wage scale, American will make the appropriate adjustment at that time in accordance with the aforementioned Negotiations Protocol Agreement and Interest Arbitration Award. If the flight attendant JCBA at United does not require an upward adjustment, the attached wage scale will remain in place with no downward adjustment.”

United Airlines ultimately implemented an initial flight attendant JCBA on September 1, 2016. Immediately thereafter, the parties’ subject matter experts met to undertake the responsibilities associated with determining how the United JCBA affects

⁴ The agreement provided: “The interest arbitration Award dated December 13, 2014 ‘constitutes the American/APFA JCBA.’ This letter memorializes the parties’ joint understanding that the sole issue in the interest arbitration provided for in Paragraph 3 of the interest arbitration Award shall be whether the initial United Joint Collective Bargaining Agreement requires an upward adjustment of the American/APFA JCBA wage scales and the arbitrators shall not have authority to modify other portions of the American/APFA JCBA.”

the market-based in the aggregate analysis for the American JCBA. The parties agreed upon the new inputs and assumptions for the Model to reflect the value of the United JCBA. However, it soon became apparent that the parties fundamentally disagreed about the significance of an actual Delta 14.5% wage increase that occurred in December 2015. APFA posited that to stay true to the market-based in the aggregate standard required by the NPA, the Model needed to be adjusted to reflect the 14.5% Delta increase. Were that to occur, APFA would be entitled to an 8.18% increase to the current wage rates. American's position was that the NPA's Paragraph B.5 'reopener' calls for an upward wage adjustment based solely on the United JCBA. Delta's out-year 3% annual increases were previously agreed to and baked into the final version of the Model, American argued, specifically in response to the NPA's providing no contractual entitlement for a reset based on future Delta pay increases. Under the Company's position, APFA is entitled to a 1.63% increase to the current wage rates.⁵ When the parties were unable to resolve their disagreement, they jointly invoked NPA's Paragraph B.5(b) procedures.

According to the NPA, this Arbitration Board is charged with "determin[ing] what changes, if any, should be made to American's JCBA under the 'market-based in the aggregate' standard."

The Board conducted hearings in Washington D.C. on January 5, 6 and 7, 2017. The parties filed post-hearing briefs on February 6, 2017. The Board met in executive

⁵ The parties do not dispute the mathematics of the respective calculations of 8.18% and 1.63%.

session by conference call on March 3, 2017, and in person in Washington D.C. on April 7, 2017.

THE ISSUE

As provided in the Negotiations Protocol Agreement, the issue is:

What changes, if any, should be made to American's JCBA under the 'market-based in the aggregate' standard?

POSITIONS OF THE PARTIES

Association Position

APFA contends that Paragraph B.5 of the NPA is clear and unambiguous in requiring that the current "market" itself must be considered in any "market-based in the aggregate" analysis. This requires consideration of both real time United and real time Delta terms. Anything less, APFA argues, would not constitute a consideration of the "market."

Further, the Association contends, the bargaining history of the NPA demonstrates that the "market-based in the aggregate" standard was not designed to be a snapshot of the 2014 market, as the Company seems to suggest. To the contrary, the bargaining history clearly establishes that the parties' intent was to average the current or real-time market. During bargaining for the NPA, the Company agreed to strike its proposed reference to "2014 economic values" in the definition of the "market-based in the aggregate standard. Removal of this language was intended to ensure there was no static market analysis. By requiring that the "market-based in the aggregate" analysis be

conducted upon the implementation of an initial United JCBA, the parties agreed the analysis would not be confined to 2014 numbers but rather would be centered on the market in existence if and when the United JCBA was reached.

APFA asserts that, contrary to the requisites of Paragraph 6, American's proposed wage increase of approximately 1.6% will automatically result in a JCBA that is, in 2016, below the "market-based in the aggregate," contrary to the NPA plain directive. Under the Company's interpretation of the NPA, the words "market-based in the aggregate" essentially do not exist. The Association insists that the language "under the market-based in the aggregate analysis" would not have been included in the NPA if the parties' intent were simply to determine the impact of the initial United JCBA on the American JCBA.

The 3% figure, says the Association, was a placeholder. At no time did the Association agree that figure would supersede the real-time market when the United JCBA was to be implemented. Rather, the 3% was inserted in the Model to ensure that the JCBA provided for out-year increases in wages. Such an approach was entirely consistent with the NPA, the Association insists.

Company Position

The Company agrees at the outset that Paragraph B.5 of the NPA now requires that the agreed-upon Model's "market-based in the aggregate" analysis be adjusted to reflect the initial United JCBA that became effective September 1, 2016. The Company contends, however, that during the JCBA negotiations, American and the APFA reached

a binding agreement for calculation of the “market-based in the aggregate” analysis, including taking account of prospective Delta out-year wage increases for the duration of the American-APFA JCBA. According to the Company, the agreed-upon Model includes 3% annual increases for Delta’s out-years for the duration of the American JCBA. It notes, these 3% annual increases in the Model cumulatively provide for wage increases of 15.9% above Delta’s 2014 rates.

The Company rejects the Association’s assertion that the 3% annual out-year increases for Delta were only intended to serve as a “placeholder” if and when the initial United JCBA became effective. The evidence is clear that both parties understood that the Model’s 3% annual wage increases for Delta to be used in the “market-based in the aggregate” calculation was a binding agreement for the duration of the American JCBA. This agreement, it claims, provided the Association the immediate benefit of a significant increase in the calculation of the “market-based in the aggregate” standard at the time.

According to the Company, the Association is attempting to circumvent the negotiated and agreed-upon language of their agreement. The language of the NPA does not support the premise that implementation of the United JCBA triggers a wholly new “market-based in the aggregate” analysis. To the contrary, it is only the United JCBA that is to be examined to determine the effect on the previously completed “market-based in the aggregate” analysis that was done in accordance with Paragraph B.5.

The Company argues that the bargaining history of the NPA supports its position. The parties simply agreed, in the event there was not an initial United JCBA at the time of the American JCBA was implemented, that the American JCBA would be updated to reflect the terms of the initial United JCBA once it became effective. It was for this reason that the parties agreed to include an adjustment or reopener for United, and no other air carrier. If the parties had intended that there should be consideration of both Delta and United wage adjustments, they would have mentioned Delta (not just United) in the provision.

Accordingly, the Company insists that the modification in this case requires an award of a 1.6% wage increase for the Company's flight attendants as representing an accurate reflection of how the initial United JCBA affects the "market-based in the aggregate" analysis for the American JCBA.

THE AGREEMENT

The Negotiations Protocol Agreement, dated January 24, 2014, provides in relevant part:

...

B. Interest Arbitration

...

3. For the interest arbitration, "market-based in the aggregate" shall be based on Delta and United if an initial United-AFA joint collective bargaining agreement has been implemented at the time of the arbitration, and shall be based on Delta, United, and Continental if no initial United-AFA joint collective bargaining agreement has been implemented at the time of the arbitration.

...

5. In the event that United implements an initial flight attendant joint collective bargaining agreement after the American JCBA is implemented, beginning no later than thirty (30) days after the initial United joint collective bargaining agreement has been implemented, the Company and the certified collective bargaining representative(s) of the flight attendants in the service of the Company shall determine how the initial United joint collective bargaining agreement affects the “market-based in the aggregate” analysis for the American JCBA.
 - a. The American JCBA shall thereafter be adjusted under the “market-based in the aggregate” analysis to reflect the initial United joint collective bargaining agreement.
 - b. If the Company and the certified collective bargaining representative(s) of the flight attendants in the service of the Company are unable to agree on the impact on the American JCBA of the initial United joint collective bargaining agreement under the “market-based in the aggregate” analysis, within fifteen (15) days from their initial meeting the Company and the certified collective bargaining representative(s) of the flight attendants in the service of the Company shall immediately submit their dispute to final and binding arbitration to determine what changes, if any, should be made to American’s JCBA under the “market-based in the aggregate” standard. The award shall be issued no later than thirty (30) days after the first day of the hearing and shall be final and binding on all parties. The procedures for the arbitration shall be agreed upon by the parties.

6. The American JCBA that results from the arbitration procedures described herein shall have a total economic value that:
 - a. is equal to “market-based in the aggregate,” and
 - b. as applied to pre-merger American Flight Attendants, has a total economic value which is greater than the total economic value of the American Airlines CLA as applied to pre-merger American Flight Attendants; and
 - c. as applied to pre-merger US Airways Flight Attendants, has a total economic value which is greater than the total economic value of the USA CBA as applied to pre-merger US Airways Flight Attendants.

ANALYSIS

Central to resolution of this dispute are the terms of the Negotiations Protocol Agreement (“NPA”) entered into by American Airlines, U.S. Airways, APFA and AFA⁶ as a precursor to their negotiations for a Joint Collective Bargaining Agreement. The parties agree Paragraph B.5 is the operative language:

In the event that United implements an initial flight attendant joint collective bargaining agreement after the American JCBA is implemented, beginning no later than thirty (30) days after the initial United joint collective bargaining agreement has been implemented, the Company and the certified collective bargaining representative(s) of the flight attendants in the service of the Company shall determine how the initial United joint collective bargaining agreement affects the "market-based in the aggregate" analysis for the American JCBA.

The above-cited language sets the stage for a potential "reopener," triggered by implementation of the United JCBA, that requires the parties to analyze a carefully-defined market for purposes of adjusting American flight attendant pay levels. That much is undisputed. The parties also agree that Paragraph B.3 of the NPA denotes Delta and United as the relevant “market” for purposes of determining "market-based in the aggregate".⁷

⁶ The Association properly characterizes the NPA as the "Cornerstone Agreement".

⁷ In its entirety, Section B.3 states:

For the interest arbitration, "market-based in the aggregate" shall be based on Delta and United if an initial United–AFA joint collective bargaining agreement has been implemented at the time of the arbitration, and shall be based on Delta, United, and Continental if no initial United–AFA joint collective bargaining agreement has been implemented at the time of the arbitration.

The interest arbitration referred to in Section B.3 above is the Interest Arbitration that resulted in the American JCBA, awarded in December 2014. United and the AFA achieved an initial joint collective bargaining agreement effective September 1, 2016.

The parties differ, however, as to the value of the Delta comparator in this Paragraph B.5(b) arbitration. As noted above, the Association says Delta's 14.5% actual wage adjustment of December 1, 2015 should be recognized in lieu of a 3% figure assigned by the parties in constructing a Model to be used by them in evaluating the relevant airline market.⁸

Thus, the question presented here is whether, as the Company maintains, the 3% imputed figure for Delta was an agreed-upon assumption, binding as a result of the NPA's required market evaluation process or whether, as APFA contends, the 3% was a "placeholder," intended to be replaced by the "actual" adjustment at the point the American JCBA was reopened and reevaluated in light of the United JCBA.⁹

For the reasons that follow, we conclude that the parties' use of the 3% imputed figure was neither intended nor understood as a malleable "placeholder" but was, instead, the parties' joint response to the task of defining an otherwise elusive comparator in the market against which the United JCBA's impact would be measured.

We turn first to the language of the NPA itself. Both parties say the language is clear and unambiguous, (which is often an indication it is not). As will be discussed below, there can be no question Paragraph B.5 speaks to assessing the effect of only one

⁸ The parties stipulate the Company's position would generate an increase in current American flight attendant wage scales of 1.6258813748537 %. If APFA's position were adopted, the parties agree the increase would be 8.18298578076942 %.

⁹ By agreement of the parties on December 18, 2014, subsequent to the Interest Arbitration, "the sole issue in the [Paragraph B.5(b) arbitration] shall be whether the initial United Joint Collective Bargaining Agreement requires an upward adjustment of the American/APFA JCBA wage scales and the arbitrators shall not have the authority to modify other portions of the American/APFA JCBA".

item — the United JCBA — on the “market-based in the aggregate” analysis. Paragraph 5 states, unequivocally, that, within 30 days of the United JCBA implementation, the parties shall “determine how *the initial United joint collective bargaining agreement* affects the ‘market based aggregate’ analysis for the American JCBA.” Similarly, B.5(a) directs that “The American JCBA shall thereafter be adjusted under the ‘market-based in the aggregate’ analysis to reflect *the initial United joint collective bargaining agreement*.” Inasmuch as the sole identified moving part in the evaluation process is the United JCBA, the remaining question, central to this dispute, concerns the intended assumptions as to the value of the other market comparator’s (Delta’s) wage adjustment. For the reasons to be discussed herein, we find no evidence in the record that the agreed-upon annual value of 3% was to be somehow subject to later review and revision.

In the course of attempting to negotiate their American JCBA, the parties ultimately opted to submit the matter to binding interest arbitration under a “market-based in the aggregate” standard. While the NPA requires the parties to engage in such a market analysis, neither the precise mechanics of that inquiry nor the assumptions surrounding the inputs are specified therein. Joint groups appointed by the Company and the participating unions, APFA and CWA/AFA, cooperated in constructing a market valuation model to assist the parties in negotiations. The purpose of the Model was to measure, during negotiations, the value of an AA JCBA against existing “market-based in the aggregate” comparators or, failing a negotiated agreement, to apply the market comparisons in the Interest Arbitration.¹⁰

¹⁰ It was a daunting task. The Model is complicated by the necessity of evaluating no less than six airlines: American, US Airways East, US Airways West, Delta, Continental and United.

The prospect that the American parties might complete a JCBA prior to United's having done so presented a question of how to comply with the NPA's requirement to evaluate the effect of the United JCBA on the market aggregate. The Protocol agreement addressed that problem in B.5 by specifically providing for a subsequent inquiry by the American parties at the time of the United JCBA's implementation, with the understanding the results would be retroactive.¹¹

For analytic and predictability purposes, Delta presented a different challenge. Because the Delta labor group work force, except for pilots and dispatchers, is not organized, there was no "straightforward process in forecasting what Delta is going to do."¹² Absent predictability, according to one of the subject matter experts, "we have to go on what's happened in the past as the best evidence for what could likely happen in the future." As a result, the joint group of experts reviewed what it regarded as a relevant portion of Delta history (2008-2014), concluding that 3% fairly represented an average annual wage increase.

By installing the 3% assumption into the Model, the parties resolved the uncertainty of both the timing and the quantum of the adjustment that would otherwise have surrounded the Delta comparator. The parties concluded that 3% annual

¹¹ Retroactivity is addressed in the parties' Joint Fact Stipulation.

¹² In his testimony, the APFA economist expressed his belief that the 3% figure was intended as a mere "placeholder." There is no reason to question his own conclusion on that score, but we do not regard it as the product of any negotiations. For much the same reason, we reject the Company's suggestion that the APFA economist somehow agreed, on behalf of the Association, to the methodology here espoused by the Company.

adjustments through the end of the contract term properly represented a reasonable projection of the future valuation of the Delta portion of the market.¹³

To be sure, the parties might have opted to frame the “reopener” wage adjustment language with an eye toward not only the actual United JCBA but also the “actual” Delta wage adjustments that may have occurred after the initial American JCBA was implemented. But that reading is at odds with both the unqualified NPA language, which explicitly and exclusively refers to the parties considering the impact of the initial United JCBA as well as the conspicuous absence of any written or other indication (subsequent to the NPA) that the 3% assumption for modeling purposes represented anything other than an agreed, albeit imputed, market value constant.

We agree with APFA’s observation that the controlling elements in this matter are the words of the NPA, not the deliberations of the Model makers.¹⁴ It is in that light that we read the NPA’s singular emphasis on the impact of the United JCBA as consistent with the assumption that the quantum, therefore the “effect” of the other required comparator —Delta —had been previously determined. If, as the Union proposes, the parties intended a separate potential adjustment by replacing the 3% with

¹³ The record reflects discussions between the bargaining parties, in the latter part of 2014, over the necessity of including computations in the model for out-years at Delta, United and Continental. As a result, the model incorporated 3% annual increases as representing the Delta out-years, for the duration of the American JCBA, through 2019. Three percent, according to the record, was the mutually agreeable number “based on the principles of what Delta had historically provided” to its flight attendants. While the parties discussed the prospect of inserting similar inputs for the out-year increases at United and Continental, the Company declined, citing the existence of the negotiated reopener in Paragraph B.5 of the NPA, tied to the United JCBA.

¹⁴ The binding nature of the Model derives from the agreement of the two unions and the companies, the signatories to the NPA: The Model Committee fulfilled its charge to assess “the market-based aggregate” and the NPA mandated its use in arbitration.

then-current “Delta driven market numbers”, it was incumbent upon the companies, APFA and AFA to have so stated. Nowhere is there qualifying language suggesting that in addition to calculating the effect of the initial United JCBA, the parties intended that “actual” Delta figures — higher, lower, or for that matter, nonexistent — should replace figures already computed into the American JCBA for the five-year term.¹⁵ The parties were explicit in terms of utilizing the anticipated United JCBA. Their silence in the NPA and thereafter in the contract term with respect to Delta leads, we find, to the unavoidable conclusion that the market evaluation with respect to *that* comparator carrier, once resolved in Interest Arbitration for the American JCBA through 2019, was not intended to be reopened for mid-term adjustments.¹⁶

¹⁵ APFA suggests that this Arbitration panel need not be constrained by the parties’ positions and can, in theory, “remove” the placeholders for the years 2017-2019, yielding an additional salary increase of approximately 6% rather than the posited 8%. We recognize and accept the parties’ agreement that this is not an “either-or” final offer arbitration. However, the central question, as well as the parties’ positions, concerning the intent of the 3% Delta adjustment presents us with a binary choice. If, as the Association argues, the 3% is a “placeholder,” to be replaced by the actual Delta wage adjustment, we award that figure. If, as the Company says, the 3% is the parties’ adopted assumption for Delta, given the absence of a reliable alternative predictor, then that market assumption must be adopted.

¹⁶ The Association directs the Board's attention to Paragraph 6 of the NPA, which states, in relevant part:
The American JCBA that results from the arbitration procedures described herein shall have a total economic value that:

a.is equal to "market-based in the aggregate," ...

American's proposed wage increase, says APFA, will result in a JCBA that is, in 2016, below "market-based in the aggregate." Says the Association: “This illogical position assumes that the unions and their negotiators accepted a market model that would only match the market in year one of a 5-year collective bargaining agreement.”

We do not agree. First, it is likely that the language of Paragraph 6 pertains to the Interest Arbitration and not this one. Subsections (b) and (c) of Paragraph 6 deal with comparisons to the American Airlines CLA and the USA CBA, both of which are extraneous to this proceeding. Also, “the American JCBA” referred to in Paragraph 6 was the product of the Interest Arbitration, whereas in this proceeding, we are dealing with the “impact” of the United JCBA *on* the American JCBA. Moreover, it is not accurate that, for pay purposes, the Flight Attendant contract is keyed to 2014. Instead, our finding is the current market has been necessarily defined by the parties having inserted an immutable and continuing 3% figure because, in their judgment, that was a reasonable projection based on Delta’s uncertain wage adjustment history. The point is that whatever confidence the parties might have had in the United market wage progression (which, in fact, led them to look to “actual” United JCBA results) did not, apparently, extend to Delta, hence the historical review and the decision against taking the same approach with that carrier. In the final analysis, it is the case that the results of the arbitration procedures are, in fact, equal to the 6(a) “market-based in the aggregate” standard as the parties themselves defined it.

The Association contests the conclusion that the 3% annual increases for Delta should be binding on the parties in terms of its use for defining the market in existence at the time of the United JCBA. The figure, it argues, was a "placeholder," injected for the sole purpose of ensuring that the JCBA provided for out-year increases. It asserts:

At the time of the modeling for the JCBA in 2014, it was not known what increase Delta would give, or when a United JCBA would be reached, or what the increase at Delta would be after the United JCBA. In modeling United, all the variables would be ascertainable. However, in modeling Delta, a non-union carrier, assumptions needed to be utilized because there were no fixed numbers to insert into the model. The only alternative would be to utilize zero % increases, which would represent an assumption which the Union had previously indicated was unacceptable, and the economists on both sides had reasonably rejected.

But the addition of a defined adjustment level was inspired, initially, by APFA's concern that the model, as originally constructed, *had* included a zero percent assumption for any post-2014 increases. As a result, the parties engaged in the research described above to arrive at the 3% figure approximating Delta's historical adjustment.¹⁷ The genesis, then, of placing any imputed figure for Delta into the AA JCBA was the understandable concern on the part of the parties that Delta would likely have *some* wage increase(s) over the contract term, but no one could know when or by how much. In this light, the decision to insert a figure representing a historical average speaks forcefully to the conclusion that the 3% annual increase was, in fact, the mutually intended goal.

¹⁷ The Company also agreed to include the contractual wage increase remaining in the legacy United labor agreement for March 2015 into the model.

The Association recognizes the necessity, in evaluating the market, of treating Delta differently. It notes:

The reality is that the fundamental differences between the two carriers mandated different treatment at that time as, again, Delta flight attendants are not unionized and changes at Delta are unpredictable. ... Conversely, United had a collective bargaining agreement that had fixed wage increases, and the parties assumed that at an unknown point in the future United would implement a JCBA, at which point future increases would be known.

In this context, known changes at United both before and after the implementation of the JCBA were captured in the model as well as in the NPA mechanism that gave rise to this arbitration. Applying the same economic modeling does not work for a non-union carrier.

This observation correctly assesses the distinctions that characterized American's two market comparators, and that led the parties to construct the Model here in evidence.¹⁸

But, APFA continues:

Unlike United, one could not simply plug in fixed numbers for Delta prior to a United JCBA. Some sort of placeholder, logically speaking, would have to be utilized to account for the out-years – and it was.

This conclusion does not follow. True it is that an identifiable “fixed number plug in” was unavailable for Delta, for the reasons discussed above.¹⁹ But this does not require the conclusion that a temporary placeholder was thereby essential. Among other things, the parties to the NPA might have deferred the Delta evaluation, as they did with United. As discussed above, however, this would have posed the potential of a zero percent Delta adjustment for the out-years, a result the Union acknowledges was unacceptable. And, it would have required the parties to evaluate the effect of not only

¹⁸ It was not Delta's non-union status *per se* that was troublesome so much as the fact that its wage adjustments were markedly unpredictable both as to their nature and timing.

¹⁹ It was, in fact, unavailable for United as well, at the time of the modeling, but the reasonable certainty of a United JCBA during the American contract term meant that the requisite data would ultimately be available.

the United JCBA but also of any prior Delta adjustment(s), a process clearly beyond the negotiated limits of Paragraph B.5. Alternatively, they might have provided that the 3% reference was to be interpreted as “the higher of actual increase or 3%”. But as indicated above, we find no language or other indication the parties intended this result. In this light, the conclusion that the parties intended to impute a plug-in that was both rationally derived and historically justifiable is both available and, in this case, compelling.

The "United reopener", says APFA, was to provide an opportunity to redress the thousands of bargaining unit employees who had made painful and extensive concessions that enabled the Company to survive under the protection of the bankruptcy laws. Those concessions were very real. We do not, by this decision, seek to minimize or ignore the economic and real life impact. The decision in this case is made with a careful eye to the charge afforded this Board, which is to interpret and apply the negotiated terms of the parties' agreement, in this case, the NPA.

Finally, to dismiss the imputed 3% number as a "placeholder," a term found nowhere in the parties' written agreement (nor, according to the record, was it employed in discussions during the modeling exercise) would not satisfactorily explain its use as an acceptable adjustment in the out-years of the contract. The Negotiation Protocol Agreement's basic mandate to the parties in this case was to compare the American JCBA to a market comprised of similarly-situated comparators, United and Delta. At the time of drafting, the mechanics of doing so were complicated by uncertainty as to when the United agreement would be available for review and application and when, or

if, a Delta wage adjustment would surface at all during the AA/APFA multi-year contract. The parties dealt with those challenges in two ways: (1) They agreed to consider the impact of the United JCBA - on the market aggregate at the time that labor agreement appeared and (2) they later derived, with reference to Delta's wage adjustment history, an average increase that would serve as the imputed Delta market figure for evaluation purposes. On the basis of these findings, we conclude that the effect of the United JCBA on a market aggregate of this composition shall be a contractual wage increase of 1.6258813748537%.

AWARD

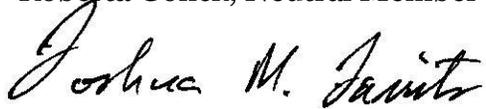
The contractual wage increase shall amount to 1.6258813748537%.



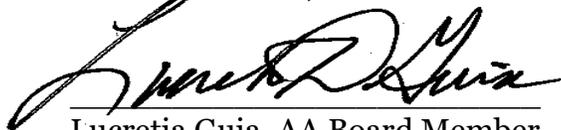
Richard I. Bloch, Chair



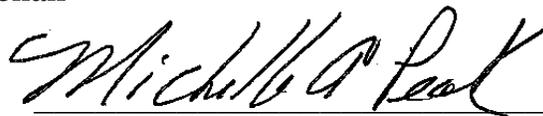
Roberta Golick, Neutral Member



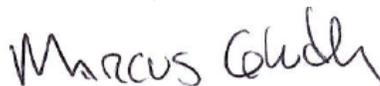
Joshua M. Javits, Neutral Member



Lucretia Guia, AA Board Member



Michelle Peak, AA Board Member



Marcus Gluth, APFA Board Member
(dissenting)



Alin Boswell, APFA Board Member
(dissenting)

Dated: April 17, 2017