

**IN THE MATTER OF ARBITRATION BETWEEN:**

Association of Professional Flight Attendants	:	
Local 1021 (APFA)	:	
The Union	:	Opinion
	:	
- and -	:	and
	:	
American Airlines, Inc.	:	Award
The Company	:	

Presidential Grievance No. SS-186-2018-APFA-7

System Board of Adjustment  
Brett Durkin, APFA Member  
Glenda Talley, APFA Member

Maranda Rosenthal, AA Member  
Laurie Lofgen, AA Member

Margaret R. Brogan, Esquire  
Neutral Arbitrator

Appearances

For the Union

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In this matter, the APFA has protested the implementation of American's Flight Attendant Attendance and Performance Program through the vehicle of this Presidential Grievance, before a System Board of Adjustment.

Hearings were held in this matter, before the System Board, on June 17, June 18, June 19, September 9 and September 10, 2019. Pre-hearing and Post-hearing briefs were filed by the parties. The System Board has met in numerous executive sessions.

At the hearings, the parties were afforded the opportunity to present relevant argument and evidence, which included invaluable witness testimony. In addition, numerous APFA bargaining unit members and members of management were able to observe the proceedings.

Pursuant to the Procedural Protocol Agreement, the parties stipulated that the following issues are submitted to the System Board of Adjustment:

### **ISSUES**

1. Whether the Company has violated Sections 9.B.2, 9.D.1.a.,9.D.1.c, 10.O.E.ii, 12.G, 12.H, 25.L.2, 30.B.2.a, 37.Q, and/or related sections of the JCBA, and/or past practice, through its implementation and/or application of the Flight Attendant Attendance and Performance Program. If so, what shall be the remedy?
2. Whether the Flight Attendant Attendance and Performance Program should be struck down, in whole or in part, as an unreasonable exercise of management authority?

## **RELEVANT CONTRACTUAL PROVISIONS of the JCBA**

### **Section 9.B.2**

*A Flight Attendant who is unable to report for duty for twenty-one (21) or more consecutive days following the origination of a sick call will be required to notify her/his Flight Service Manager. The Company may require a Flight Attendant who is unable to report for duty for twenty-one (21) or more consecutive days to present medical documentation.*

### **Section 9.D.1.a**

*A Lineholder will be charged trips missed from her/his line of flying for each trip she/he is unable to report for duty because of illness or injury and her/his sick leave bank will be reduced accordingly. The claim will be paid with accrued sick leave, or will be unpaid time to the extent the sick leave bank does not have the necessary accrued hours. A Lineholder with a sick bank balance that doesn't cover her/his sick call(s) will be required to achieve a minimum monthly pay and credit of forty (40) hours. A Lineholder unable to achieve the required minimum monthly pay and credit of forty (40) hours must request and provide documentation to support a leave of absence to cover the unpaid sick call(s) or make a reasonable effort to achieve forty (40) hours as defined in Scheduling, Section 10.D.19.d, excluding time picked up through the ETB.*

### **Section 9.D.1.c**

*A Lineholder who has called in sick for a trip may call Crew Schedule to inform the Company that she/he is able to fly on remaining day(s) of the trip for which she/he had called in sick. With Crew Schedule's consent, a Lineholder who has called in well to crew Schedule, may pick up a trip on TTS on days other than the first day of the trip she/he called in sick, except that when a sequence for which a Lineholder called in sick includes a weekend or holiday (including the day before or the day after a holiday) in which case the Lineholder may only pick up a trip on a weekend or holiday. Holidays include New Year's Day, Memorial Day, Fourth of July, Labor Day, Halloween, Thanksgiving, and Christmas. The Lineholder will be charged sick leave for any portion of the trip coded as sick.*

### **Section 10.O.1.e.ii**

*If a Flight Attendant fails to check-in for a sequence within ten (10) minutes past the scheduled report time, Crew Schedule CHECK SP may*

*remove the Flight Attendant from the sequence without pay protection. However, if a Flight Attendant arrives at the aircraft with sufficient time to change the manifest, Crew Schedule will allow the Flight Attendant to fly the sequence even if a Standby Reserve has been assigned.*

## 12.G and H

### Section 12.G.2

*A Reserve will be required to be available to accept a duty assignment during her/his twelve (12) hour RAP. The sequence report may be no later than two (2) hours after the end of the RAP.*

### Section 12.H

- 1. A reserve shall be required to report within two (2) hours from the time she/he is notified of a sequence by Crew Schedule. If a Reserve reports to the airport after check-in time for the sequence, she/he shall receive pay and credit for the sequence as if she/he had checked in for the sequence at the same time as the rest of the crew. As an exception, Reserve Flight Attendants at co-terminals shall be provided three (3) hours call out.  
\*\*\**
- 3 Crew Schedule shall first attempt to contact a Reserve at the Reserve's primary telephone number. A Reserve may use a cellular phone number as her/his primary telephone number. If a message device is encountered the Scheduler shall leave a message.*
- 4 If a secondary contact number is provided and Crew Schedule is unable to contact Reserve at the Reserve's primary telephone number, the Scheduler shall promptly attempt to contact the Reserve on the secondary contact number. If a message device is encountered, the Scheduler shall leave a message. The Reserve shall have fifteen (15) minutes to respond to Crew Schedule from the second call if a secondary contract number is provided, or fifteen (15) minutes to respond to Crew Schedule from the initial call if no secondary contact number is provided.*

## Section 25.L.2

- 1. A Flight Attendant is entitled to two (2) Personal Days per rolling twelve (12) month period to be used only in the event of an*

*unexpected emergency. A Flight Attendant may request use of her/his Personal Days by making a verbal request to Crew Schedule with a follow up call to her/his supervisor.*

2. *The Company's decision to award Personal Days will be based on coverage. The Company will not require verification of the emergency. The Personal Days will be unpaid. A Reserve will have four (4) hours and ten (10) minutes (thirty (30) day month) or three (3) hours and fifty-six (56) minutes (thirty-one (31) day month) deducted from her/his guarantee.*
3. *After the two (2) Personal Days are exhausted, the Company maintains the discretion to grant additional days consistent with the current practice regarding Personal Days. For any such additional days, the Flight Attendant must contact her/his supervisor.*

#### Section 30.B.2.a

##### 2. *Presidential Grievances*

###### a. *Filing*

*The APFA National President may protest, in writing, to the Vice President of Labor Relations of the Company any action of the Company or any alleged misapplication or misinterpretation of this Agreement within forty-five (45) days after such alleged action, misapplication or misinterpretation has been ascertained.*

#### Section 37.Q

##### 1. *Maintenance of Documents Regarding Job Performance*

*Except as provided herein, documents regarding the job performance of a Flight Attendant shall be maintained in a single department file located at the Flight Attendant's base...*

##### 3. *Handling of Documents Containing Derogatory Comments*

*a. No document containing derogatory comments (including passenger complaints) which might serve as a basis for disciplinary action will be placed in the Flight Attendant's department file unless a copy is provided to the Flight Attendant within ten (10) calendar days from receipt by Flight Service. Flight Service will date-stamp documents containing derogatory comments with the date they are received by Flight Service.*

*b. In the event a document identifies a passenger, another Flight Attendant, or contains derogatory comments about an employee other than the Flight Attendant, that information will be redacted before the document is provided to the Flight Attendant. The Flight Attendant shall not contact the complainant. If applicable, the class of service where the incident occurred will be provided. If a grievance is filed which involves the redacted document, the redacted information will be provided to the grievant and AFPA during the document exchange pursuant to System Board of Adjustment, Section 31.P.*

*c. No documents regarding a passenger complaint shall be placed in the Flight Attendant's file unless:*

*i. The alleged misconduct or disservice was something over which the Flight Attendant had control; and,*

*ii. The Flight Attendant is named or adequately described in the document.*

*d. The Flight Attendant may provide a written response to any document or notation containing derogatory comments. These responses will be placed in the department file by Flight Service Management. If the Company determines that the Flight Attendant's challenge to the document is justified, the document or notation will be removed and destroyed. In no event will an anonymous document be placed in the department file.*

### **FACTUAL BACKGROUND**

On December 9, 2013, American and US Airways finalized a merger to form the new American Airlines. Following the merger came the complex task of merging two established workgroups. The Legacy US Airways Flight Attendants (LUS) were represented by the AFA, and the Legacy American Flight Attendants (LAA) were represented by the APFA. Each was subject to separate existing collective bargaining agreements at the time of the merger. The parties

(American and the APFA) then engaged in expedited negotiations to merge the two agreements, using an “adopt and go” approach which allowed for adopting contractual sections from the prior US Airways/AFA CBA (the Redbook) and from the prior American/APFA (Foundation Document). The parties successfully negotiated a Joint Collective Bargaining Agreement. (JCBA)

Prior to the merger, each bargaining unit was subject to a different attendance policy. Those policies continued post merger. On October 1, 2018, American unilaterally implemented the Flight Attendant Attendance and Performance Program applicable to all American Flight Attendants (herein referred to as the Attendance Policy or Program). The Attendance Policy contains aspects from both prior programs, along with some new elements, representing changes for Flight Attendants, some significant.

Pursuant to JCBA Section 30.B.2.A, the APFA filed this Presidential Grievance protesting the Attendance Policy as both violative of certain sections of the Joint Collective Bargaining Agreement (JCBA), and as an unreasonable exercise of the Company’s management rights reserved under the JCBA.

### **DISCUSSION**

As indicated, the Union’s challenge to the Attendance Policy is two-pronged. The Union contends that the Attendance Policy, on its face, violates

the JCBA and is also an unreasonable exercise of managerial discretion. Both contentions are inter-related and will be discussed below.

The respective arguments made by the APFA and American are briefly summarized on certain points. The summary is not meant to be exhaustive. This System Board of Adjustment has carefully considered the extensive record in this case including the important testimony, documents, and arguments of the parties on these complex issues, in reaching our conclusions.

### **Allegations That the Attendance Policy violates the JCBA**

#### **Assessing Points for the Third Personal Day and Beyond**

Under the JCBA, in Section 25.L.2, a Flight Attendant is entitled to two unpaid personal days per rolling twelve (12) month period to be used only in the event of an unexpected emergency. After the two days are exhausted, the Company maintains the discretion to grant additional days, upon the Flight Attendant's request, "consistent with the current practice regarding Personal Days." Under the Attendance Policy, American now automatically assesses an attendance point for each personal day requested and granted by management, beyond the two contractually guaranteed personal days, in a rolling twelve-month period.

This JCBA language, in large part, came from the prior US Airways Redbook. The prior practice under the US Airways dependability program



provided that a Flight Attendant “may” move up in the disciplinary progression for taking a third personal day and beyond. In keeping with a prior arbitration award on the subject, points were not automatically assessed unless an employee abused the privilege, such as seeking the privilege repeatedly or for questionable reasons. *U.S. Air, Inc. v. AFA*, #30-99-02-16-91. (Scearce, 1994)

The Union contends in this proceeding that the Company’s automatic assessment of attendance points for Flight Attendants using more than two personal days, when such days are subject to management’s ability to grant or deny, is unreasonable, and violates past practice in line with the express JCBA language, along with arbitral precedent.

According to American, the JCBA does not prohibit the Employer from assessing these points for a third personal day and beyond. The Employer disputes that the APFA has established a binding past practice on this issue, or that the prior arbitration award cited supports the APFA’s position.

A majority of this Board concludes that American’s automatic assessment of an attendance point to Flight Attendants for a third personal day and beyond is a violation of the JCBA as an unreasonable exercise of managerial prerogative, where there is insufficient evidence that an employee has been abusing the privilege. The Board relies upon the fact that management has the prerogative to

approve the days. Moreover, the explicit language in Section 25.L.2 incorporates the prior practice, which is in line with persuasive prior arbitral precedent.

Accordingly, it is concluded that American may not automatically assess an attendance point in the situation where a Flight Attendant, after request and approval, takes three or more personal days; however, American retains the discretion to assess points where there is a showing that the Flight Attendant has abused the privilege, such as seeking the privilege repeatedly or for questionable reasons.

#### Notification Requirement for Reserves to Report to Work

Section 12.H.1 provides that "A Reserve shall be required to report within two (2) hours from the time she/he is notified of a sequence by Crew Schedule...As an exception, Reserve Flight Attendants at co-terminals shall be provided three (3) hours call out." Sections 12.H.2 and 3 lay out the procedure for Crew Schedule to notify a Reserve Flight Attendant to report. Specifically, Crew Schedule will first call the primary phone number and if they encounter a message device, they will leave a message for the Flight Attendant to call back. If Crew Schedule cannot leave a message on the primary phone number they will leave a message, if possible, on the secondary phone number, if provided. The message left does not contain the details of the flight sequence assignment. The Reserve has fifteen minutes to respond to Crew Schedule from the second call if

a secondary contact number is provided, or fifteen minutes to respond to Crew Schedule from the initial call if no secondary contact number is provided.

As of October 1, 2018, the time when the LUS and LAA Flight Attendant groups became fully integrated, American has taken the position that the two-hour clock, or three-hour clock if applicable, begins to run when Crew Schedule leaves a message, meaning that the Flight Attendant may incur either a "late report" or "missed trip" under the Attendance Policy if they report more than two hours, or three hours at a co-terminal, from the time a message is left. According to American, a Flight Attendant is "notified of a sequence by Crew Schedule" as of the time of the phone message, because the flight assignment is at that point on her/his Company-issued tablet.

The APFA contends that the Employer is violating the JCBA by unilaterally changing the prior practice, which was that the notification triggering the report obligation was always considered to be when "positive contact" occurred, that is, when a Flight Attendant speaks with someone from the Company and receives the assignment, with the sufficient information to get to work as detailed in Section 12.T.1 of the JCBA. The APFA argues that American's change is unreasonable, and deprives a Flight Attendant of the guaranteed period to report to work after receiving the notification of assignment.

A majority of this System Board concludes that American's current practice, of considering notification to be as of the time a message is left, to be an inaccurate interpretation of Section 12.H. It is uncontroverted that the necessary details of the flight assignment are not left in the voice message, which is reflective of the reality that assignments are subject to change prior to the Flight Attendant confirming the assignment. The record did not support the Company's claim that the final flight sequence details are available on Company-issued tablets, as of the time the message was left, and prior to "positive contact" between Crew Schedule and the Flight Attendant, given this uncertainty. It is concluded that the prior practice of considering 12.H notification to be at the time the Reserve Flight Attendant speaks with Crew Schedule should be maintained, and the two-hour or three-hour report obligation does not begin until that "positive contact" is made.

In addition, the parties stipulated at hearing that a reserve out of base, also known as not positioned for duty, does not mean that Flight Attendants are obligated to be physically located within the defined home or base city while on reserve so long as the FAs make their assignment on-time within the required time period set forth under Section 12.H.

### Late Reports: 5 vs. 10 Minutes

The Company, pursuant to the Attendance Policy, assesses points for a late report (LR) after the first LR. Under the Attendance Policy, a Flight Attendant is considered a late report when she checks in more than 5 minutes after the scheduled report time. Prior to the merger of Flight Attendant groups, LUS Flight Attendants had a 10 minute grace period, while LAA Flight Attendants had to check-in within 5 minutes of the scheduled report time.

Section 10.O.1.e.ii, in pertinent part, provides that if a Flight Attendant fails to check-in for a sequence within 10 minutes past the scheduled report time, Crew Schedule can remove the Flight Attendant from the sequence without pay protection.

The APFA contends that the Company is violating Section 10.O.1.e.ii of the JCBA by failing to grant a Flight Attendant a 10-minute grace period for reporting. The APFA points out that the language of that section was in large part lifted from the US Airways Redbook. APFA argues this mirrored the 10-minute grace period reflected in the LUS Dependability Program, which stated that, "A flight attendant who checks in ten (10) minutes or more after scheduled check-in...will receive a [Late Check-In]." According to the APFA, the Company's actions are another example where the Company agreed to lift contract language from one of the prior collective bargaining agreements, but has failed to honor the past practice and underlying meaning.

The Company argues that its assessment of points for Late Reports, after the first one, when a Flight Attendant is more than 5 minutes late to check-in is reasonable and does not violate the language of Section 10.O.1.e.ii. The Company contends that the JCBA language speaks to when a Flight Attendant can be removed from a pairing without pay protection, but does not deal with the definition of a late report. The Company points to the bargaining history evidence, which reflects that there was no discussion between the parties reflecting their shared understanding that the acceptance of the language of Section 10.O.1.e.ii, would also mean that the Company was limited in its discretion to determine when a late report begins under an attendance policy. The Company also points to the fact that there is no explicit contract language in line with the APFA's interpretation.

A majority of the Board concludes that American has not violated the JCBA by considering a late report to be more than 5 minutes after scheduled check-in, as it is applied under the Attendance policy. It is concluded that there is insufficient evidence to establish that a 10-minute grace period for reporting was mutually agreed to, for purposes of assessing points under the Attendance Policy. The contract language cited does not define a late report, and the bargaining history does not support the APFA's interpretation. Accordingly, American has not violated the JCBA by defining a late report, under the Attendance Policy, to be 5 minutes after a scheduled check-in.

### A "21-Day Sick Occurrence"

The APFA contends that American has violated Section 9.B.2 by giving more than one attendance point for a continuous sick call-out up to 21 days. According to the APFA, that contract section defines a sick absence up to 21 days as a single occurrence, in line with the prior practice at US Airways, which should have been adopted when the parties agreed to put this provision in the JCBA.

To the contrary, American argues that the JCBA does not limit American's ability to impose discipline, or prohibit the Company from assessing more than one point for an absence lasting 21 days or less. According to the Company, Section 9.B.2 relates to the Flight Attendant's obligation to report to their Flight Service Manager, and to provide medical documentation, not to the length of a sick absence for attendance purposes.

A majority of the System Board concludes that Section 9.B.2 does not mandate that every 21-day continuous call-out must be viewed as a single occurrence under the Attendance Policy. However, in the Board's review of the reasonableness of the Attendance Policy as a whole, a majority of the Board has found that certain changes should be made related to this issue, including defining the length of an absence, planned absences over a critical period, and block FMLA. Those changes will be discussed below.

### The “40-Hour Obligation”

Section 9.D.1.a of the JCBA was adopted by the parties from the LUS CBA. That section refers to a “minimum monthly pay and credit of forty (40) hours” in certain contexts. The APFA argues that the Company is wrongfully claiming, in violation of Section 9.D.1.a, that it can assess a Flight Attendant with a performance chargeable event for failing to meet a “40-hour obligation.” According to the APFA, the plain language of the contract does not create an obligation to work 40 hours; rather, the language refers to a scheduling restriction, not an employment threshold. The APFA opines that this interpretation is consistent with past practice, bargaining history, and Company communication.

The Company has argued in this proceeding that the plain language of Section 9.D.1 does not prohibit American from considering the failure to meet the 40-hour requirement as a performance violation under the Attendance Policy. The Company has contended that the parties’ bargaining history supports its interpretation that it retained the managerial discretion to view the failure to meet the threshold as a performance event.

However, following the close of the record, the Company informed the System Board that it has agreed to not enforce performance discipline related to the 40-hour obligation for the 2020 calendar year. At end of that time the Company will review and assess whether it believes that performance discipline



related to the 40-hour obligation is necessary going forward. The Company will so inform the Union and will meet and discuss with the Union upon request.

### **The Reasonableness of the Attendance Policy**

The Union has challenged American's recent Flight Attendant Attendance and Performance Program as an unreasonable exercise of the Company's management rights. The Union does not contend that the Company is without authority to promulgate an attendance policy and recognized the Company's right to do so at the hearing. The Union protests the Program in its current form, arguing that it is unreasonable on its face. A majority of the System Board agrees that the Company has the authority to issue an attendance policy so long as it is reasonable and the various aspects are aimed at appropriately enforcing the Company's reliability expectations.

As stated above, the parties presented substantial evidence at the hearing, including invaluable witness testimony, and have submitted both pre-hearing and post-hearing briefs. Based on the record evidence, argument and legal authorities relied upon by the parties, the System Board finds that the Program is within the Company's right to promulgate under the Parties' CBA. The System Board further finds that with the following changes, the Program is determined reasonable as a whole:

- MyView – Customer Complaints will not be automatically added as a Performance Event within MyView.
- Calling in Well – the Company has implemented Calling in Well. The Company will also clarify that the Flight Attendant can always call in to inform the Company that she/he is able to fly on remaining day(s) of the trip for which she/he had called in sick. Such flying is subject to Crew Schedule's consent. Flight Attendants will still be charged attendance points and SK for any days that they have not flown during the original footprint of the trip for which they called off sick.
- Length of Absence – a single continuous sick (SK) absence will not be charged a second attendance point until the 7th day of the continuous absence.
- Planned Absences Over a Critical Period - approved Medical Leaves of Absence (MLOAs) that touch a critical period will not be assessed a point for the critical period, so long as the MLOA was approved prior to the bidding period for the critical period month. This means the MLOA would not have resulted in any dropped trips, or potential lost reserve assignments.
- Block FMLA - if a Flight Attendant goes out on a continuous medical leave for an FMLA qualifying condition and the Flight Attendant applies and is granted FMLA leave, the Flight Attendant will not be charged attendance points even if the Flight Attendant's single, continuous absence from work extends beyond the FMLA entitlement.
- Trip Missed (TM)– if the Flight Attendant is a late report (LR) and misses a trip (for any reason), but operates any trip that same day, the Flight Attendant will only be charged with a LR and not a TM.
- Multiple Event Point Scenarios (Compounding) – a Flight Attendant will only be charged points for two separate events for the same trip, on the same day for the following scenarios:
  - LR and SK – when the Flight Attendant receives a LR beyond the 1 contractual allowance and SK is used on the same day, points will apply for both events. This would result in 2 points for an occurrence of 6 or fewer days and 3 points for an occurrence of 7 or more days.
  - LR and Personal Day (PO) – when the Flight Attendant receives a LR beyond the 1 contractual allowance and a Personal Day (PO) in excess of the contractual allotment (2 per year) is used on the same day, points may apply for both events, when points are

- assessed for a PO consistent with this Award. This could result in 2 points.
- Critical Period – the Flight Attendant will be charged 1 additional point for any occurrence during a critical period (other than the exceptions noted above for MLOA or non-point generating PO).
  - Points Cap for Single Event – no single event will be charged more than 3 points, regardless of compounding.
  - Progressive Discipline – a Flight Attendant may be advanced to a Level 1 once the Flight Attendant has accumulated 4 points, Level 2 at 7 points, Level 3 at 9 points, and may be at Termination Level at 11 points.
  - A Flight Attendant will not be automatically assessed an attendance point when taking a personal day beyond two days in a rolling 12-month period, absent a showing that the Flight Attendant has abused the privilege, such as seeking the privilege repeatedly or for questionable reasons.
  - A Reserve Flight Attendant is obligated to report to their assignment within two hours (or three hours at a co-terminal) from the time they speak with Crew Schedule and are notified of the specifics of their flight sequence assignment.
  - In line with the parties' stipulation at hearing, a reserve out of base, also known as not positioned for duty, does not mean that Flight Attendants are obligated to be physically located within the defined home or base city while on reserve so long as the FAs make their assignment on-time within the required time period set forth under Section 12.H.
  - A Late Report may be issued to a Flight Attendant under the Attendance Policy, when a Flight Attendant reports more than five minutes after their scheduled report time.
  - Banked incentive points will be automatically applied to the next occurrence.

As noted in the Flight Attendant Attendance and Performance Program, the Company will continue to administer the Program to create awareness of the Company's expectations and encourage communication. Flight Service Managers will continue to have the ability to exercise discretion and review the

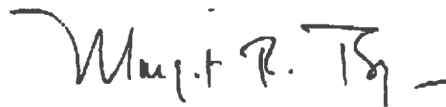
facts and circumstances to mitigate points where warranted. The Company will provide Flight Service Managers with training on the above changes to the Program and guidance on appropriate use of mitigation. The Company will also conduct a review of Flight Attendants' records since October 1, 2018 and make adjustments in accordance with the above.

**AWARD**

In line with the above Opinion, the grievance is sustained in part, and denied in part. A majority of the System Board concludes that American has the authority to promulgate an attendance policy so long as it is reasonable, and the various elements of the policy are aimed at appropriately enforcing the Company's reliability expectations. Also, a majority of the System Board concludes that certain elements of the Flight Attendant and Performance Program run afoul of the JCBA on its face, while some of the APFA's allegations have been denied.

Accordingly, a majority of this System Board of Adjustment finds that changes, consistent with the above, should be made to the Flight Attendant Attendance and Performance Program. In so doing, a majority of the System Board concludes that the Attendance Policy is reasonable as a whole and in line with the JCBA, on its face. Nothing herein is meant to preclude the ability of the APFA to grieve applications of the Attendance Policy.

This System Board of Adjustment shall retain jurisdiction for a reasonable period.



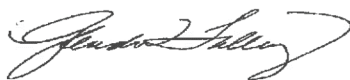
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Margaret R. Brogan, Neutral Chair  
Date: February 27, 2020



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Brett Durkin, APFA Member



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Maranda Rosenthal, AA Member



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