Labor & Employment Issues
In Focus
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TWU & IAM NEGOTIATE TOP FLIGHT JOINT AGREEMENTS FOR THEIR MEMBERS EMPLOYED BY AMERICAN AIRLINES

After more than four long years of negotiations, the TWU-IAM Association, a recently formed joint labor organization, announced on January 30, 2020 that it reached five joint collective bargaining agreements ("JCBAs") with American Airlines collectively worth $4.2 billion. The JCBAs give over 30,000 employees industry-leading compensation (wages, premiums, retirement, and profit sharing), benefits, job security, limitations on outsourcing and medical coverage. As TWU President John Samuelsen summarized: "This contract is a victory for the union's membership."

Following the merger of American Airlines' former parent company AMR Corp. and US Airways Group, which created the largest airline in the world, multiple labor contracts from the different airlines and unions became conflated. The Transport Workers Union of America (TWU) and the International Association of Machinists and Aerospace Workers (IAM) formed the Association in 2013 to avoid negotiating individually against the "new" American Airlines Holdings Inc. Negotiations with the airline began in December, 2015 and grew bitter at times, with the company suing the Association in May, 2019 due to an alleged slowdown of work at several locations which led to 650 flight cancellations and over 1,500 maintenance delays.

One major topic that grounded TWU-IAM negotiations were company attempts to outsource future maintenance work, something that is now protected under the new agreements. Other highlights, though each of the five agreements vary, include:

- Signing bonuses of $6,000 for all but Fleet Service ($3,000);
- Four year terms with base pay rate increases between 5.5 – 17.7% and 2% annual wage increases;
- Profit Sharing Formula to include 10% of American's first $2.5 billion of pre-tax income as well as 20% of pre-tax-income above $2.5 billion (in addition to increases to retirement plan contributions);
- Caps on outsourcing and offshoring of maintenance work, scope of work protections and across the board minimum headcounts
- "Me Too" provisions for plan design and cost share improvements of medical plans used with other American Airlines groups;
- Increased contributions to the IAM's defined benefit pension plan to the equivalent of 5% of total pay, with workers represented by TWU getting the same amount contributed to their 401(k) plans;
- 401(k) employer match of 100% up to 4% of the employee's total pay; and
- Retirement eligible employees may elect to receive 50% of their hourly pay rate for each unused and accrued hour of sick leave deposited into an HRA for use in paying for retiree benefits in lieu of a cash payment.

The agreements must still be ratified by the Union's Mechanic & Related, Fleet Service, Maintenance Control, MLS/Stores and Maintenance Training Specialist members (highlights for each of the TWU-IAM Association JCBAs can be accessed from each group's hyperlink).

DISTRICT OF COLUMBIA CIRCUIT COURT AGAIN REJECTS NLRB'S JURISDICTION OVER RELIGIOUS SCHOOL FACULTY

Refusing to enforce a National Labor Relations Board ("Board") order directing Duquesne University to bargain with the union certified to represent the adjunct faculty in the liberal arts college of Duquesne, a divided United States Circuit Court of Appeals for the District of Columbia sought to put an end to the Board's efforts to recognize bargaining rights for faculty members who do not play a role in the institution's religious education environment. *Duquesne University of the Holy Spirit v. National Labor Relations Board,* No. 18-1063, January 28, 2020. However, given the strong dissent from one of the Court panel's members which embraced the Board's test for determining jurisdiction over temporary, part-time adjunct faculty at religious schools, this issue will likely continue to fester until the U.S. Supreme Court weighs in.

At Duquesne University, adjunct faculty, who are hired for one semester at a time, teach close to 50% of all credit hours in the university's general education requirements, its core curriculum. In 2012, the adjuncts sought to unionize with the United Steelworkers Union. After winning a Board election, the Union was certified as the representative of the faculty except those who taught theology, but the University refused to bargain and an unfair labor practice was filed. The Board ordered Duquesne to bargain, and Duquesne petitioned for review to the D.C. Circuit Court of Appeals, arguing that the Board lacked jurisdiction.

The Court described in detail the Board's continuing efforts to assert jurisdiction over religious schools and teachers since the 1970s and noted how its decisions have not met with success in the courts. The Court stated that when the Board began to assert jurisdiction over religious schools, it tried to distinguish between schools it deemed completely religious and those it thought only "religiously-associated" which the Board could regulate. The Board used the approach in a number of cases in the 1970s to compel Catholic high schools to bargain with unions representing lay teachers. This approach, as the Court stated, was rejected by the U.S. Supreme Court in *NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490 (1979), where the Supreme Court stated that teachers play a critical role in fulfilling the mission of a church-operated school regardless of whether they provide instruction in religious or secular subjects. Thus, the Supreme Court said the Board's exercise of jurisdiction over teachers at any church-operated school presented a risk of infringement of the First Amendment.

Despite that, the D.C. Circuit Court stated, the Board claimed that religious colleges and universities were different than primary and high schools at issue in *Catholic Bishop,* because they were primarily concerned with providing a secular education. This approach was batted down in a First Circuit Court of Appeals case, after which the Board devised another approach by which it would assert jurisdiction over schools that lacked a "substantial religious character." *Univ. of Great Falls,* 331 NLRB 1663 (2000). That approach was rejected by the D.C. Circuit Court of Appeals on the appeal in *Univ. of Great Falls v. NLRB,* 278 F. 3d 1335 (D. C. Cir. 2002). There, the Court directed the Board to use a "bright-line test" – whether the institution held itself out as a religious institution, is non-profit, and is religiously affiliated. According to the Court, this test allowed the Board to determine jurisdiction without delving into matters of religious

doctrine or motive which could force the institution to alter its mission to meet regulatory demands.

Not following *Great Falls,* in *Pacific Lutheran University,* 361 NLRB 1404 (2014), the Board devised a different approach to determine its jurisdiction – it required the college to show that it holds itself out as "providing a religious education environment" plus the school must show that the petitioned-for unit of faculty members were held out by the school as "performing a specific role in creating or maintaining the college or university's religious educational environment,…." This formulation triggered a vigorous dissent by two members of the Board at that time, with one Board member pointing out that, since every Board decision can be appealed to the D.C. Circuit, any attempt by the Board to chart a different path that set out in *Great Falls* "appears predestined to futility." *Id.* at 1429.

As foreseen by that dissenting Board member, the Circuit Court in *Duquesne University,* followed its own "bright-line" test to conclude that the Board lacked jurisdiction over Duquesne and its adjunct faculty. The Court held that the Board's *Pacific Lutheran University* decision was contrary to the Court's decisions by its assertion of jurisdiction over schools who do not hold out faculty members as playing a specific role in the school's religious educational environment. The Court reiterated that the Board may not dig into whether faculty members play religious or non-religious roles under the restraint of the Religion Clauses in the First Amendment.

The dissenting member of the D.C. Circuit's panel, Judge Pillard, was undeterred and opined that it is not at all apparent that temporary, part-time adjunct faculty whom the school does not even hold out as agents of its religious mission should be denied rights under the National Labor Relations Act. Judge Pillard noted that, while all parties are in agreement that permanent full faculty at religious schools are excluded, this case is about adjunct faculty which is an open issue never before decided. Judge Pillard embraced the Board's approach in *Pacific Lutheran University* as measured and eliminating "needless sacrifice of adjuncts' NLRA rights."

STRIKING WORKERS MAY NOW OBTAIN UNEMPLOYMENT BENEFITS AFTER THREE WEEKS' LOSS OF EMPLOYMENT

On February 6, 2020, Governor Cuomo signed legislation (Chapter 20 of the Laws of 2020) that reduces the amount of time that striking workers must wait before being eligible for unemployment benefits.

Prior to passage of the legislation, the New York State Labor Law required that the accumulation of unemployment benefits by striking workers be suspended for a seven-week period beginning on the day following the claimant's loss of employment due to a strike. Additionally, after the seven-week suspension period, a claimant could claim unemployment benefits but still had to serve a one-week unpaid waiting period before the benefits were paid. Effectively, striking workers were not able to receive unemployment benefits for eight weeks following their loss of employment.

The recent amendments reduce the seven-week suspension period to a two-week suspension period, plus the one week unpaid waiting period. This change will significantly reduce the financial hardship that had been imposed on workers exercising their lawful right to strike and allow them to claim unemployment insurance benefits on the same terms as non-striking workers who experience loss of employment.

A prior version of the legislation (Chapter 755 of the Laws of 2019), which had been passed by the legislature at the end of its 2019 legislative session and also signed by the Governor on February 6, 2020, had reduced the suspension period to one week. To address concerns about making the suspension period too short, however, the Governor and legislative leaders agreed to the compromise of a two-week suspension period contained in the agreed-upon chapter amendment (Chapter 20 of 2020). These changes became effective immediately upon signature of the chapter amendment by the Governor.

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