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August 28, 2014

*Via E-File (OLA-efile@nmb.gov)*

Mary L. Johnson, General Counsel  
National Mediation Board  
1301 K Street, NW  
Suite 250 East  
Washington, DC 20005

RE: Case No. CR-7131 – Airline Mechanics and Related Employee Association  
TWU/IAM, Airline Fleet Service Employee Association TWU/IAM, and  
Airline Stores Employee Association TWU/IAM

Dear Ms. Johnson:

On August 6, 2014, the Transport Workers Union of America (“TWU”) and the International Association of Machinists and Aerospace Workers (“IAM”) jointly filed a single carrier application, seeking the certification of the above-captioned Associations formed by TWU and IAM as the representatives for the combined crafts and classes of Mechanic and Related, Fleet Service, and Stores employees at the post-merger American Airlines. On behalf of the Associations, we write in order to briefly respond to the letter to the National Mediation Board (“NMB”) dated August 21, 2014 from Gary Peterson, President of TWU Air Transport Local 591. Mr. Peterson requests that the NMB deny the Associations application to appear on the ballot in a single carrier election conducted by the Board.

As an initial matter, although Mr. Peterson purports to write on behalf of TWU Local 591, the TWU International Union is the certified represented under the Railway Labor Act (“RLA”) for the crafts or classes at American covered by the current application. Accordingly, only the TWU International Union has the authority to take an official position on behalf of TWU-represented employees in this matter. Therefore, Mr. Peterson’s letter only represents his own personal views, and nothing more.

Moreover, it is clear from Mr. Peterson’s letter that his primary objective is to obtain rulings from the NMB which he believes will be advantageous to him in on-going litigation initiated by him against the TWU. On February 6, 2013, Mr. Peterson filed a

lawsuit in the United States District Court for the District of Columbia alleging that the TWU had breached its duty of fair representation toward line mechanics at American represented by certain TWU locals, including Local 591, due to the support for the Aircraft Mechanics Fraternal Association (“AMFA”) by some local officers. The lawsuit seeks an injunction imposing certain conditions upon the conduct of TWU in future collective bargaining with American. See Attachment 1, *Peterson v. TWU*, 2d Am. Compl.

Mr. Peterson raises two arguments in his letter, both of which are flatly contradicted by ample NMB precedent. First, he argues that two unions may not form a joint association for the purpose of representing an employee group under the RLA, claiming that the RLA only permits representation of a single craft or class by a single labor union. This claim is incorrect. Based on the plain language of the RLA, the NMB has held that an organization jointly formed by multiple labor unions properly constitutes a “representative” as defined by the RLA. In a case involving a joint council formed by HERE and IBT to represent Gate Gourmet employees, the Board held:

...[the] objection to the Council because it is an *ad hoc* organization created specifically for this application lacks merit. Under the RLA, labor unions may coalesce into organizations and councils to represent employees as the IBT and HERE have done in this case. The NMB finds that the Council meets the definition of “representative” under 45 U.S.C. § 151, Sixth.<sup>1</sup>

*Dobbs Int’l Servs., Inc. d/b/a Gate Gourmet*, 27 NMB 537, 545-46 (2000).

Organizations jointly formed by multiple unions are well-established under the RLA. The NMB has certified joint organizations in numerous cases, including prior cases involving TWU. See, e.g., *US Airways/America West Airlines*, 33 NMB 151 (2006) (certifying association formed by CWA and IBT to represent passenger service employees); *Gate Safe*, 29 NMB 305 (2002) (certifying council formed by HERE and IBT to represent security employees); *Dobbs Int’l Servs., Inc. d/b/a Gate Gourmet*, 28 NMB 7 (2000) (certifying council formed by HERE and IBT to represent kitchen/catering employees); *Union Pacific/Southern Pacific Lines*, 24 NMB 647 (1997) (certifying council formed by TCU and UTU to represent yardmasters); *Amtrak*, 14 NMB 45 (1986) (certifying council formed by TWU, TCU, and HERE to represent on-board service employees). In addition, other joint organizations are voluntarily recognized by

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<sup>1</sup> The RLA defines the term “representative” as “any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.” 45 U.S.C. § 151, Sixth.

carriers under the RLA, including the Joint Council of Carmen formed by TWU and TCU.

Moreover, the NMB is currently conducting a single carrier representation election among passenger service employees in which an association formed by CWA and IBT is on the ballot. The Associations formed by TWU and IAM were modelled in large part on the structure of the CWA/IBT Association, originally formed to represent passenger service employees at US Airways following its merger with America West Airlines. *See* Attachment 2, CWA/IBT Association Agreement and Constitution. As with the CWA/IBT Association and many other similar joint council arrangements under the RLA, collective bargaining authority at American will be exercised by the TWU/IAM Associations, and contract administration is delegated to the constituent labor organizations, depending on geographical location.

In his letter, Mr. Peterson also misconstrues the concept of “singleness of agency.” RLA Section 2, Ninth was enacted to ensure that there would be a single and legitimate representative for bargaining on behalf of a craft or class of employees. This was a reaction to efforts by multiple unions to bargain separately for carrier employees in a single craft or class. *See Switchmens’ Union of N. Am. v. NMB*, 320 U.S. 297, 302-03 (1943); *General Committee of Adjustment v. Missouri-Kansas-Texas R.R. Co.*, 320 U.S. 323, 334-36 (1943). Thus, in the *New York Central RR. Co.* decision cited by Mr. Peterson, the Board rejected the proposition that two unions could separately represent and negotiate for employees in the same craft or class at a single carrier. 1 NMB 197 (1941). Although the RLA prohibits two or more unions from bargaining separately for employees in the same craft or class, the Act does not prohibit two unions from forming an association to bargain together for the entire craft or class. Thus, the Associations do not run afoul of the statute or NMB precedent because TWU and IAM will bargain together as a single representative for each craft or class, as provided by the Associations’ Constitutions. In addition, although the concept of singleness of agency requires bargaining through one representative, it does not preclude that representative from delegating enforcement functions between the two organizations any more than a union is precluded from delegating contract enforcement functions to its locals.

Second, Mr. Peterson claims that the showing of interest cannot be made in this matter based on TWU and IAM’s existing collective bargaining agreements, seniority lists, or dues check-off lists, and instead can only be satisfied by presenting authorization cards in the names of the Associations. The NMB, however, has not imposed such a requirement in past cases where incumbent unions have sought certification for a newly formed joint association. For example, the NMB permitted the joint council at Gate Gourmet formed by HERE and IBT to rely on the unions’ existing collective bargaining agreements as supplemented by cards from previously unrepresented employees in order

to meet the showing of interest. *See Gate Gourmet*, 27 NMB at 538, 546. In fact, to require authorization cards under circumstances such as the current application would needlessly elevate form over substance and waste both union, company, and Board resources in order to process cards from already-represented employees.

Mr. Peterson also mistakenly suggests that the new statutory showing of interest requirement somehow precludes the Associations from relying on current collective bargaining agreements, seniority lists, or dues check-off lists to make a showing of interest. RLA Section 2, Twelfth now requires a showing of interest of at least 50% of the craft or class, and the NMB has applied that requirement to single carrier applications. 77 Fed. Reg. 75543, 75543-46 (Dec. 21, 2012). However, the new statutory provision did not alter the NMB's long-standing policy permitting the use of current collective bargaining agreements, seniority lists, or dues check-off lists to meet the showing of interest requirement.

For all the foregoing reasons, the TWU/IAM Associations respectfully submit that the NMB should deny Mr. Peterson's request.

Sincerely,



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IAM Counsel

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TWU Counsel

**CERTIFICATE OF SIMULTANEOUS SERVICE**

I hereby certify that a copy of the foregoing letter with attachments in NMB Case No. CR-7131 was served by electronic mail this 28th day of August, 2014, on the following:

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# **ATTACHMENT 1**



declaration that the TWU breached its duty of fair representation, and violated the plaintiffs' rights under the Labor-Management Reporting and Disclosure Act, and an injunction to restrain the TWU's unlawful conduct, and any other appropriate relief.

### **PARTIES**

2. Plaintiff Gary Peterson is a resident of Fort Worth, Texas, and at all relevant times was a member of the Transport Workers Union of America, AFL-CIO, and employed as an Aviation Maintenance Technician by American Airlines, Inc.

3. Plaintiff Gary Schaible is a resident of Lewisville, Texas, and at all relevant times was a member of the Transport Workers Union of America, AFL-CIO, and employed as an Aviation Maintenance Technician by American Airlines, Inc.

4. Plaintiff Larry Pike is a resident of Haslet, Texas, and at all relevant times was a member of the Transport Workers Union of America, AFL-CIO, and employed as an Aviation Maintenance Technician by American Airlines, Inc.

5. Plaintiff Bruce Rohr is a resident of Highland Village, Texas, and at all relevant times was a member of the Transport Workers Union of America, AFL-CIO, and employed as an Aviation Maintenance Technician by American Airlines, Inc.

6. Plaintiff Troy Rhoads is a resident of Weatherford, Texas, and at all relevant times was a member of the Transport Workers Union of America, AFL-CIO, and employed as an Aviation Maintenance Technician by American Airlines, Inc.

7. Defendant, Transport Workers Union of America, AFL-CIO ("TWU"), is an unincorporated association organized for the purpose and objective of a labor organization and is a "representative" as defined in Section 1, Sixth of the Railway Labor Act ("RLA"), 45 U.S.C. § 151, Sixth. TWU is the certified collective bargaining representative of the craft or class of

Mechanics and Related Employees employed by American Airlines. TWU's principal place of business is located at 501 3<sup>rd</sup> Street NW, 9<sup>th</sup> Floor, Washington, D.C. 20001.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction), because the case arises under the laws of the United States, specifically, section 301(b) of the Labor Management Relations Act (29 U.S.C. § 141 et seq.); the Labor-Management Reporting and Disclosure Act ("LMRDA") (29 U.S.C. § 401 et seq.); and the Railway Labor Act ("RLA") (45 U.S.C. § 151 et seq.), under which the duty of fair representation owed by unions to those they represent arises.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because the defendant, the Transport Workers Union of America, AFL-CIO, resides in this district.

### **CLASS ALLEGATIONS**

10. Plaintiffs bring this action as a class action pursuant to Rule 23(a), and 23(b)(1)(B), 23(b)(2), or 23(b)(3), 23(c)(4), or, in the alternative, Rule 23.2 of the Federal Rules of Civil Procedure, on behalf of all persons employed on August 8, 2012 at American Airlines, Inc. in the Aviation Maintenance Occupational Title Group within the craft or class of Mechanics and Related Employees at American's Line Maintenance Stations, and at American's maintenance bases located at Alliance Airport ("AFW") and Dallas-Fort Worth Airport ("DWH"). All of the members of the Class are members of, and/or represented by, the Transport Workers Union of America, AFL-CIO.

11. The members of the class are so numerous that joinder of all class members is impracticable. They reside in many different states and jurisdictions, and, upon information and belief, number more than 4,000 individuals.

12. The claims of the Named Plaintiffs are typical of the claims of other members of the class, and the Named Plaintiffs and all members of the class sustained injury and will continue to sustain injury from defendant's wrongful conduct.

13. There are questions of law and fact common to members of the class, including:

a) Whether the TWU breached its duty of fair representation to the putative class, when it acted on grounds generally applicable to the class as alleged herein;

b) Whether the TWU breached its Constitution;

c) Whether the TWU breached its Policy and Rules for Contract Negotiations;

d) Whether the TWU denied the putative class equal rights and privileges, as guaranteed by the Labor-Management Reporting and Disclosure Act when it acted on grounds generally applicable to the class, as alleged herein;

e) Whether the declaratory and injunctive relief requested herein is an appropriate remedy and will provide a common benefit to all union members.

14. The representative parties will fairly and adequately protect the interests of the class. Neither the Named Plaintiffs nor their counsel has any interests antagonistic to, or in conflict with, the class that the Named Plaintiffs seek to represent.

15. The Named Plaintiffs are represented by counsel experienced in complex litigation, and in litigation involving class actions, issues concerning federal labor law and, in particular, issues common to the aviation industry and to employment-related issues within that industry, including issues concerning the union duty of fair representation.

16. Prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class

which would establish incompatible standards of conduct for the party opposing the class, or adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interest.

17. Questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

## **BACKGROUND**

### **The Mechanics and Related Employees at American Airlines**

18. The TWU is the collective bargaining representative of seven employee groups at American Airlines (“American”). Each of these TWU-represented work groups is covered by a separate collective bargaining agreement (“CBA”). One of the TWU-represented employee groups at American is the craft or class of “Mechanics and Related Employees.”

19. Pursuant to the collective bargaining agreement covering the Mechanics and Related Employees, the employees in the Mechanics and Related Employees group are divided into two Occupational Title Groups. Title I employees are Aviation Maintenance employees, which includes Aviation Maintenance Technicians and other employees who perform aviation maintenance-related work. For convenience, this Complaint will refer to Title I employees as “mechanics.” Title II employees are Plant Maintenance employees, which includes employees who perform automotive and facilities maintenance.

20. The plaintiffs in this action are Title I employees, and bring this action on behalf of similarly situated Title I employees.

21. Title I employees at American Airlines includes mechanics who service aircraft at airports (“Line Mechanics”), and mechanics who work at maintenance base hangars where aircraft receive periodic heavy maintenance checks and overhauls.

22. American’s Line Mechanics work at various airports (“Line Stations”) in the United States where American operates commercial flights, including, but not limited to, New York, Boston, Miami, Chicago, Dallas, and Los Angeles.

23. American has three maintenance bases for heavy maintenance checks and overhauls. The largest maintenance base is located in Tulsa, Oklahoma. The other two maintenance bases are located in Fort Worth, Texas, one at Alliance Airport (“AFW”), and one at the Dallas-Fort Worth Airport (“DWH”). DWH did not become a separate maintenance base until 2012.

24. Over half of American’s employees within the craft or class of Mechanics and Related Employees are employed at the Tulsa maintenance base.

25. For many years, American’s Mechanics and Related Employees have expressed dissatisfaction with their representation by the TWU, and have actively sought to replace the TWU with another union, the Aircraft Mechanics Fraternal Association (“AMFA”), a labor union that, unlike the TWU, restricts itself exclusively to the representation of Mechanics and Related Employees. AMFA currently represents the Mechanics and Related Employees of Southwest Airlines and Alaska Airlines.

26. In 1998 and 2003, mechanics at American Airlines conducted organizing campaigns to collect signed authorization cards in order to request a representation election between AMFA and the TWU.

27. Under the RLA, where the bargaining unit is already represented by an incumbent union, a challenging union can only obtain an election by obtaining signed authorization cards from 50% plus one of the eligible employees of the craft or class. National Mediation Board rules require that all union elections within the airline industry be conducted on a systemwide basis. The statute does not permit union organization on a line station or base-specific basis.

28. In both the 1998 and the 2003 organizing campaigns, the Line and AFW Mechanics overwhelmingly supported AMFA. However, without sufficient support from a majority of mechanics at the Tulsa maintenance base, the organizing drives were unsuccessful.

29. In the 1998 and the 2003 organizing campaigns, AMFA supporters were able to collect valid authorization cards from a majority of Mechanics and Related Employees at nearly every Line Station throughout the American system, and at AFW, but were unable to collect valid authorization cards from a majority of Tulsa's Mechanics and Related Employees.

30. In response to the AMFA organizing campaign in 2003, the TWU required the presidents of all Locals to pledge to support the TWU over AMFA.

31. The president of the Line Station local in New York, Local 562, refused to sign the pledge, and was charged with violations of the TWU's Constitution, and was removed from office.

32. At the same time, the TWU removed Local 562's Secretary Treasurer from office because he had posted a number of electronic messages on the Internet which appeared to support and prefer AMFA to the TWU.

33. In or about May 2012, another organizing campaign started, with the same goal of replacing the TWU with AMFA as the collective bargaining representative of American's Mechanics and Related Employees. As in the prior organizing campaigns, the Line Mechanics,

and the mechanics at the AFW and DWH maintenance bases, overwhelmingly support the current campaign to replace the TWU.

**American's Bankruptcy and the 2012 Contract Negotiations**

34. On November 29, 2011, American filed a petition for relief under chapter 11 of the United States Bankruptcy Code.

35. Pursuant to Section 1113(b) of the Bankruptcy Code, on or about February 1, 2012, American made a proposal to the TWU to modify the collective bargaining agreement covering the Mechanics and Related Employees.

36. On March 27, 2012, American filed a motion with the bankruptcy court seeking permission to reject its collective bargaining agreement with the TWU pursuant to Section 1113 of the Bankruptcy Code.

37. From approximately February 1, 2012 to July 10, 2012, pursuant to Section 1113 of the Bankruptcy Code, American and the TWU negotiated modifications to the collective bargaining agreement covering the Mechanics and Related Employees.

38. During the 2012 contract negotiations, the predominant focus of the TWU was to protect the interests of the Mechanics and Related Employees at the Tulsa maintenance base due to their history of supporting the TWU notwithstanding its concessionary policies.

39. The TWU failed to fairly represent the interests of the Line, AFW and DWH mechanics in the 2012 contract negotiations.

40. In the contract negotiations, the TWU, without a legitimate purpose, and with the intention to penalize the plaintiffs for their internal union dissent and political differences, deceptively favored its Tulsa maintenance base members at the material expense of its Line, AFW, and DWH members.

41. The TWU acted with animus to disregard the interests of its Line, AFW, and DWH members, which constitute a membership minority, solely to advantage its politically loyal membership majority at the Tulsa maintenance base, which constitutes a majority of the membership.

42. During the negotiations, TWU International officers and representatives were openly hostile toward the presidents of the TWU Line Station locals based on the TWU's perception that all of the presidents of the Line Station locals supported AMFA over the TWU.

43. TWU International officers and representatives referred to the presidents of the TWU Line Station Locals as "AMFA presidents."

44. TWU International President Jim Little told the presidents of the TWU Line Station Locals, "all you want is AMFA."

45. TWU International President Jim Little told the president of TWU Local 562, whose members are Line Mechanics in New York, "you are an AMFA president, you're out to destroy the TWU, you should quit."

46. President Little's comments reflected a broader policy of hostility toward Line Mechanics throughout the American Airlines system.

47. TWU International Representative Tim Gillespie told the president of TWU Local 565, whose members are Line Mechanics in Dallas and also base mechanics at DWH, "you're just AMFA guys and you want to destroy American Airlines and the TWU."

48. In the 2012 contract negotiations, the TWU negotiated benefits and improvements for its Tulsa maintenance base members at the expense of the Line, AFW, and DWH members.

49. The TWU knowingly and willingly condoned secret, undocumented, independent, negotiations between the pro-concessionary Tulsa local (TWU Local 514) and American (referred to herein as the “Tulsa negotiations”).

50. Negotiators from the Line Station locals, AFW and DWH were excluded from the secret Tulsa negotiations, and were not informed about such negotiations until after they were held.

51. Negotiators from the Line Station locals, AFW, and DWH remain unaware of what was negotiated, and by whom, in the Tulsa negotiations.

52. After the Tulsa negotiations were held, the TWU announced that Boeing 767 overhaul work would be moving from AFW to the Tulsa local (Local 514), and that Boeing 777 overhaul work, which was also being performed at AFW, would be outsourced.

53. Negotiators representing the AFW mechanics were never given the opportunity to negotiate with American to propose cost-saving alternatives to the movement of the Boeing 767 and 777 overhaul work from AFW.

54. For example, if given the opportunity to negotiate, Local 565 (DWH) and Local 567 (AFW) would have proposed that the AFW overhaul work be moved to nearby DWH, which would have saved American substantial revenue and non-revenue flight, fuel, and training costs that were made necessary by transferring AFW 767 overhaul work to Tulsa and by outsourcing AFW 777 overhaul work.

55. Instead, the secretly negotiated agreement by the TWU and the Tulsa local (Local 514) resulted in the elimination of several hundred mechanic positions from AFW, and the transfer of work from AFW to Tulsa.

56. As a result of the Tulsa negotiations, and the transfer of work from AFW to Tulsa, the Tulsa local (Local 514) was able to reduce its overall job loss at the expense of laid off AFW mechanics, including Named Plaintiff Troy Rhoads.

57. American's "Last Best Offer" ("LBO"), which was submitted to the TWU on or about March 22, 2012, proposed to cut 436 Line Maintenance jobs, 1,179 AFW jobs, and 2,358 jobs from Tulsa (Local 514).

58. American's March 22, 2012, LBO failed a ratification vote by the Title 1 Mechanics and Related Employees.

59. On or about July 10, 2012, American and the TWU reached a tentative agreement ("TA").

60. The TA reduced the Tulsa (Local 514) job loss from 2,358 to 899.

61. The TA also reduced the job loss for the Title II employees.

62. However, the TA *increased* the number of Title I jobs lost at the Line Stations from 436 in LBO 1 to 439 in the TA, and *increased* the number of jobs lost at AFW from 1,179 in LBO 1 to 1,199 in the TA.

63. The Title I group of mechanics at the Line Stations and AFW were the only TWU-represented group who suffered *increased* job loss as a result of the TWU's negotiation of the TA.

64. Tulsa and Title II mechanics reduced their job loss through sub-committee meetings that included American senior management negotiators who had decision-making authority.

65. Negotiators for the Line, AFW, and DWH were not given the same opportunity to meet with American senior management negotiators who had decision-making authority.

66. Had the Line, AFW, and DWH negotiators been permitted to negotiate with American in the same way that Tulsa and Title II negotiators negotiated with American, the Line, AFW, and DWH negotiators would have negotiated to reduce their job loss and to improve their working conditions.

67. But for the TWU's misconduct, the Line, AFW, and DWH negotiators would have negotiated to reduce their job loss and to improve their working conditions, as was done successfully by the Tulsa and Title II negotiators.

68. The separate, secret negotiations between the Tulsa local (TWU Local 514) and American violated the TWU-ATD [Air Transport Division] Policy and Rules for Contract Negotiations, which states that "[s]ub-committee meetings and/or caucuses with company representatives will be held only with the knowledge and consent of the full [negotiating] committee."

69. The failure of the TWU to inform the negotiators from the Line Station locals and AFW of the secret Tulsa negotiations, and to obtain the knowledge and consent of the full negotiating committee prior to such negotiations, was dishonest, deceptive, and in bad faith.

70. Unlike the negotiators for the pro-concessionary Tulsa local, the negotiators on behalf of the Line Station Locals, AFW and DWH were not permitted to meet, and independently negotiate, with American.

71. Requests by the Line Maintenance sub-committee to TWU International Negotiator Don Videtich to meet with American senior management negotiators were ignored.

72. The TWU failed to devote time and effort to negotiating on behalf of its Line, AFW, and DWH members.

73. TWU International officers and representatives, including Don Videtich, completely ignored the objections of the Line, AFW, and DWH negotiators to American's contract proposals, including, but not limited to, the following:

(a) American's proposal to eliminate all Local Letters of Agreement, agreed to by the TWU in Letter of Memorandum 8, which negatively affected only the Line Stations by eliminating agreements covering a variety of Line Station issues, including, but not limited to, overtime, holidays, shift bid procedures, vacation days, and international work (Letters of Agreement specific to the Tulsa base were not eliminated);

(b) American's proposal to permit Line Station outsourcing, agreed to by the TWU despite the objections of the Line, AFW, and DWH negotiators to the lack of specificity in the proposal, and the lack of any penalty provision if American exceeds the outsourcing cap;

(c) Letter of Memorandum 13, which was not written or approved by the negotiating committee, and which provides for Company-paid TWU-appointed positions in both Line and Base Maintenance that are not subject to the normal bidding process;

(d) Letter of Memorandum 14, which requires the TWU, including Line Maintenance, to participate in a "Business Improvement Process," despite the Line Maintenance negotiators' request to the TWU that Line Maintenance be removed from this letter agreement; and

(e) The elimination of the "Union Business Baker" letter, which eliminated American's payment of wages to union officers who work full-time for the union.

74. TWU's negotiation of the TA resulted in no improvements for Line Maintenance or AFW. Line Maintenance and AFW mechanics suffered increased job loss, and substantially inferior work rules.

75. TWU International officers and representatives violated the T.W.U. - A.T.D. Policy and Rules for Contract Negotiations and the TWU Constitution with the intention of penalizing plaintiffs for their internal union dissent and political difference.

76. The TWU Constitution provides that "[a]ny proposed agreement shall be subject to ratification by the members covered by such proposed agreement." (Art. XXV, Sect. 2).

77. The pro-concessionary leadership of the Tulsa maintenance base local (TWU Local 514) endorsed the July 10 TA. The TWU discriminated against its non-Tulsa members by purposefully failing to hold meetings outside of the Tulsa base that were intended to educate members about the proposed contract.

78. Voting on the TA (i.e., the proposed contract) took place between July 10, 2012 and August 8, 2012. On August 8, 2012, the TWU announced that the Mechanics and Related Employees ratified the new contract by the razor thin margin of 50.25% to 49.75%.

79. The Line, AFW and DWH mechanics overwhelmingly voted against the contract. The Tulsa maintenance base local (TWU Local 514), which voted for ratification by a vote of 74% in favor to 26% opposed, was the only Local to vote in favor of the contract. The contract was ratified only because the Tulsa local ratified it due to the fact that its interests were promoted at the expense of the politically disfavored Line, AFW and DWH mechanics.

80. The bankruptcy court approved the new contract on September 12, 2012.

81. Before filing this action, Plaintiffs satisfied the exhaustion of remedies requirement in the TWU Constitution (Art. XXIII) by filing a written complaint with the TWU International Secretary-Treasurer.

82. The foregoing conduct by the defendant TWU was arbitrary, discriminatory, and in bad faith, and, therefore, violated defendant's duty of fair representation.

83. As a consequence of the TWU's failure to fairly represent the Line, AFW, and DWH mechanics, one or more Plaintiffs and other similarly situated Line, AFW, and DWH mechanics have been, or will be laid off, and have suffered, or will suffer, loss of wages, benefits and working conditions.

84. As a consequence of the TWU's failure to fairly represent the Line, AFW, and DWH mechanics, Plaintiff Troy Rhoads was laid off, and, as a result, now maintains a primary (family) residence in Texas and a work residence in Illinois in order to retain employment with American.

85. As a consequence of the TWU's failure to negotiate improved job loss terms for the Line and AFW mechanics – as the TWU did for Tulsa and Title II – the relative seniority of the Named Plaintiffs, and other similarly situated Line, AFW, and DWH mechanics, has been reduced, and, as a result, has harmed, or will harm, all of the Named Plaintiffs and all of the members of the class.

86. The loss of seniority will cause harm to the Named Plaintiffs and class members by affecting their wages and working conditions, including, but not limited to, bidding on work and shift opportunities, and will expose the Named Plaintiffs and class members to greater risk of layoff.

87. Plaintiffs and the class have been harmed by the TWU's exclusion of the Line, AFW, and DWH negotiators from negotiations with American.

88. Plaintiffs and the class have been, and will be, harmed by the TWU's negotiation of work rules that have, and will, adversely affect the working conditions of the Line, AFW, and DWH mechanics.

**COUNT I**  
**BREACH OF DUTY OF FAIR REPRESENTATION**

89. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs 1 through 88 as if fully set forth herein.

90. At all times material herein, the TWU owed a duty of fair representation to all of its members, including the Named Plaintiffs and the putative class, to fairly represent them in the negotiation of the collective bargaining agreement, without acting in an arbitrary or discriminatory fashion, or in bad faith.

91. At all times material herein, the TWU breached its duty of fair representation owed to the Named Plaintiffs and the putative class by failing to fairly represent its Line, AFW, and DWH members in the negotiation of the 2012 CBA.

92. At all times material herein, the TWU breached its duty of fair representation owed to the Named Plaintiffs and the putative class by engaging in arbitrary, discriminatory, and bad faith conduct towards its Line, AFW, and DWH members in the negotiation of the 2012 CBA.

93. At all times material herein, the TWU breached its duty of fair representation owed to the Named Plaintiffs and the putative class by acting with hostility and animus towards its Line, AFW, and DWH members in the negotiation of the 2012 CBA.

94. At all times material herein, the TWU unlawfully neglected the interests of its Line, AFW, and DWH members solely to advantage the politically loyal membership majority at the Tulsa maintenance base in the negotiation of the 2012 CBA.

95. By reason of the defendant's breach of the duty of fair representation, each Named Plaintiff and each and every member of the putative class, has suffered injury caused by defendant's breach.

## **COUNT II**

### **LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT**

96. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs 1 through 95 as if fully set forth herein.

97. Members of TWU, like members of every labor organization, are guaranteed the right under section 101 of the Labor-Management Reporting and Disclosure Act (29 U.S.C. § 411) to have equal rights and privileges within such organization to vote in elections or referendums of the labor organization, subject to reasonable rules and regulations in the organization's constitution and bylaws.

98. Section 101 of the LMRDA requires that the right each member has to vote must be meaningful.

99. The TWU's negotiation of the 2012 CBA, which was conducted with hostility and animus towards its Line, AFW, and DWH members, rendered the votes of the Named Plaintiffs and the putative class in the ratification vote wholly meaningless.

100. By virtue of the foregoing, the rights of the Named Plaintiffs, both individually and as representatives of the class of all Line, AFW, and DWH mechanics at American Airlines, and the rights of the putative class, as guaranteed by the LMRDA, were infringed by the actions of defendant.

101. By reason of the defendant's violation of section 101 of the LMRDA, each Named Plaintiff and each and every member of the putative class has suffered injury caused by defendant's violation.

**WHEREFORE**, each Named Plaintiff demands judgment individually and on behalf of all members of the class against the Transport Workers Union of America, AFL-CIO, as follows:

A. Certifying this action as a class action, and appointing the Named Plaintiffs as class representatives herein with regard to the claims, as summarized below;

B. As to the claims set forth in Count I, on behalf of all Named Plaintiffs, both individually and on behalf of the Class, against defendant Transport Workers Union of America, AFL-CIO, a declaration that the defendant breached its duty of fair representation, and any other appropriate relief;

C. As to the claims set forth in Count II, on behalf of all Named Plaintiffs, both individually and on behalf of the Class, against defendant Transport Workers Union of America, AFL-CIO, a declaration that the defendant violated the Labor-Management Reporting and Disclosure Act, and any other appropriate relief;

D. As to both Counts, a permanent injunction requiring the defendant in future contract negotiations, and in future negotiations over contractual amendments, with American Airlines or any of its successor companies ("the company"), to:

- i) Refrain from participating in secret bargaining sessions with the company that are undisclosed to, or unauthorized by, any full negotiating committee (in the absence of that committee's knowledgeable consent given in advance);

- ii) Refrain from negotiating with the company with less than the full complement of any constitutionally designated negotiating committee, unless authorized in advance by the negotiating committee;
  - iii) Provide reasonable advance notice to all designated members of the full or any sub negotiating committees, of any bargaining sessions and/or caucuses with the company;
  - iv) Provide reasonable advance notice to all designated members of either the full or sub negotiating committees or any caucus of such committees;
  - v) To disclose, reasonably in advance of any contract ratification vote over a proposed contract or proposed amendment, to all members eligible to vote on such contract or amendment, the full and complete terms of such proposed contract or amendment;
  - vi) To hold meetings at all stations, line or base, if any meetings are held at any station, for the purpose of educating members about the contents of a proposed contract or amendment in advance of a ratification vote.
- E. Together with the costs and disbursements of this action, applicable interest, attorneys' fees, and such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand trial by jury of all issues so triable.

Dated: August 20, 2013

/s/

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# **ATTACHMENT 2**

**CWA AND IBT JOINT AGREEMENT FOR THE FORMATION OF THE  
AIRLINE CUSTOMER SERVICE EMPLOYEE ASSOCIATION - IBT AND CWA**

1. The name of this Joint Labor Organization is **"Airline Customer Service Employee Association - IBT and CWA"** (hereinafter **"Association"**).
2. The Association will represent for collective bargaining purposes all employees in the consolidated, post-merger Craft or Class of Passenger Service Employees of US Airways, its successors or assigns, who are currently represented for collective bargaining purposes by the CWA at US Airways, and by the IBT at America West, or who may be subsequently organized and represented for collective bargaining purposes at post-merger US Airways by IBT, CWA, their Locals or affiliates, under the auspices of this Association.
3. The Association hereby designates the IBT and/or its affiliates to represent for contract administration and other purposes that may be authorized by the Association those employees in the Craft or Class of Passenger Service Employees at America West and US Airways who are employed by, or may subsequently be employed by, US Airways, its successors or assigns, at facilities and/or stations listed on Appendix B hereto as a "IBT-serviced location".
4. The Association hereby designates the CWA and/or its affiliates to represent for contract administration and other purposes that may be authorized by the Association those employees in the Craft or Class of Passenger Service Employees at America West and US Airways who are employed by, or may subsequently be employed by, US Airways, its successors or assigns, at facilities and/or stations listed on Appendix B hereto as a "CWA-serviced location".
5. CWA and IBT shall each designate an equal number of representatives, selected from participating local unions, to serve on the US Airways

Representation Committee of the Association, which will meet as often as the Committee may decide, but at least four times each year, to discuss issues concerning the representation of the Craft or Class of Passenger Service Employees of US Airways, including but not limited to proposals that either the IBT or CWA may make, or contemplates making, regarding rates of pay, rules, or working conditions, and other concerns that may arise for employees represented by the Association. The Committee will make and formulate policy by consensus, and will subject issues to a Committee vote only upon the recommendation of both the Chairperson and Vice Chairperson of the Association. Policy resolutions recommended by the Committee must be approved by both the Chairperson and Vice-Chairperson of the Committee. Both IBT and CWA pledge that they will cooperate with each other and the Committee in accordance with the bylaws so that both organizations are able to properly and fairly represent the Craft or Class of Passenger Service Employees of US Airways.

6. In accordance with the Railway Labor Act, each union's existing collective bargaining agreement and/or "status quo" conditions will remain in effect. The Association will negotiate a single, combined Collective Bargaining Agreement with the goal of improving the salaries, benefits and other terms and conditions of the entire Passenger Service Craft or Class at US Airways. That combined contract would become effective only after membership ratification of both unions.

7. Unless otherwise provided by this Agreement, the representational duties allocated to the IBT and CWA for US Airways Passenger Service Employees will be in accordance with Appendix B. When US Airways, its successors or assigns establishes a new Passenger Service station or facility (hereinafter "station or facility"), that station or facility will be assigned according to the geographic distribution contained in Attachment B. Should one or more US Airways stations or facilities be consolidated into another existing station or

facility, the organization having representational responsibility for the station or facility into which one or more stations or facilities are consolidated, will retain that responsibility. In the event US Airways acquires, by acquisition, merger or other transaction, another air operation employing Passenger Service Employees represented by the CWA or IBT, the previous representation of those employees shall be assigned to and assumed by the Association, and representational responsibility will be assigned according to the geographic distribution contained in Attachment B. An agent who is transferred, displaced, or otherwise relocated to a station or facility shall be required to be or become a member of and/or financially support the organization that represents agents at that station or facility.

8. Changes in designations or assignments of representation for the US Airways facilities and/or stations listed in Attachment B will not be made unless such stations are eliminated or consolidated.

9. All disputes between IBT and CWA growing out of or involving the interpretation, application or enforcement of this Agreement shall be submitted to the International Presidents of CWA and IBT, or to their designated representatives. If the dispute cannot be resolved by the International Presidents or their designated representatives, it may be submitted by either organization for final and binding resolution to an Impartial Umpire either selected by the parties, or, if they are unable to agree upon a neutral, selected from a list of seven names of available neutral arbitrators provided by the American Arbitration Association or other agreed upon neutral organization with each side making alternate strikes, with the moving party striking first, until one name is left or the parties agree on a neutral.

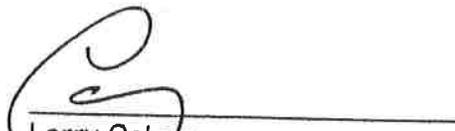
10. Either party may propose an amendment to this Agreement. If the parties are not able to reach agreement on the proposed amendment, it may be

submitted, by mutual consent, for final and binding resolution pursuant to Section 10 hereof, except that Article I, Section 3 of the Association Constitution (Appendix A) shall not be amendable under the dispute resolution procedure.

11. The CWA and IBT shall enter into and ratify the Constitution and By-Laws for the Association attached as Appendices A, and B.

Signed this 9<sup>th</sup> day of September 2005 in Washington, D.C.

  
James P. Hoffa  
General President, IBT

  
Larry Cohen  
President, CWA

## **APPENDIX A**

# **CONSTITUTION OF AIRLINE CUSTOMER SERVICE EMPLOYEE ASSOCIATION, IBT AND CWA**

## **ARTICLE I**

### **GENERAL**

#### **Section 1. NAME**

This Organization shall be known as the "Airline Customer Service Employee Association - IBT and CWA" and shall be referred to herein as the "Association."

#### **Section 2. LOCATION**

The Association shall be headquartered in the Washington, D.C. offices of the Association Director.

#### **Section 3. DURATION**

The duration of the Association shall be co-extensive with the representation of the Passenger Service Employees of US Airways, Inc., its successors or assigns, or until dissolved by agreement of CWA and IBT.

#### **Section 4. OBJECTIVES OF THE ASSOCIATION**

The Association has been formed to represent employees pursuant to the provisions of the Railway Labor Act by designating, pursuant to Section 2, Third of the Railway Labor Act, IBT and CWA to act as the authorized bargaining agents for the Association. The Association is vested with all powers and authorities necessary to carry out its objectives.

**Section 5. ASSETS, DEBTS AND EXPENSES**

(a) The Association shall not own any assets and shall not charge or collect any dues or other monies from employees it represents since the costs of representation shall be borne by designated labor organizations. The Association is empowered to negotiate with the Carrier lawful union security provisions pursuant to Section 2, Eleventh of the Railway Labor Act, which will require each represented employee, as a condition of continued employment, to become a member of and/or financially support the labor organization at the employee's US Airways workplace location designated in Appendix B, consistent with the law.

(b) Costs and expenses jointly designated by the parties as expenses incurred by the Association will be borne by the Association. All other expenses and costs of administering the Association and conducting meetings of the Association, the US Airways Representation Committee, or any other Committee established by the Association shall be borne by the CWA or IBT representative incurring such expense or cost.

**Section 6. INCORPORATION OF ASSOCIATION AGREEMENT**

This Association was formed by an Agreement between IBT and CWA first executed in Washington, D.C., on September 9, 2005. That Agreement is hereby adopted and incorporated as if a part of this Constitution and By-Laws and shall be referred to herein as the "Association Agreement."

**Section 7. AMENDMENTS**

This Constitution and By-Laws may be amended by agreement of the International Presidents of CWA and IBT or, if they are unable to resolve a dispute over an amendment, by the dispute resolution procedure established in Section 10 of the Association Agreement, except that Article 1, Section 3 of this Constitution and By-Laws shall not be amendable under the dispute resolution procedure.

## **ARTICLE II**

### **MEMBERSHIP AND OFFICERS**

#### **Section 1. MEMBERSHIP**

The Association shall consist of the International presidents of IBT and CWA and their designees.

#### **Section 2. DESIGNEES**

The International Presidents may designate one or more individuals to act for them as members of the Association and any individual or individuals so designated shall possess all powers and authority given by this Constitution and by the Association Agreement to the International Presidents.

#### **Section 3. OFFICERS**

(a) ASSOCIATION DIRECTOR - The Chief Executive Officer of the Association shall be the Association Director, which position shall alternate between the CWA International President and the IBT International President every two years for regular two-year terms, beginning with the CWA International President two years after the effective date of this agreement. The CWA International President shall serve as the Association Director for a one-year special term commencing on the effective date of this agreement, to be succeeded by the IBT International President who shall serve as the Association Director for a second one-year special term. In all years in which the CWA or IBT International President or his designee is not the Association Director, he or she will be the Association Vice-Director. The Association Director shall be responsible for scheduling and presiding over the meetings called for by Section 5 of the Association Agreement, and for calling and presiding over any meeting of the designees as the Association Director deems necessary. The Association Director shall also be a member of and act as the Chairperson of the US Airways

Representation Committee established by Section 5 of the Association Agreement.

(b) VICE DIRECTOR - The Vice Director position shall alternate between the CWA International President and the IBT International President every two years for regular two-year terms, beginning with the IBT International President two years after the effective date of this agreement. The IBT International President shall serve as the Association Vice Director for a one-year special term commencing on the effective date of this agreement, to be succeeded by the CWA International President who shall serve as the Association Vice Director for a second one-year special term. The Vice Director shall perform the duties of the Association Director during the absence of that Officer or in the case of removal, resignation, death or incapacity of that Officer without a replacement being designated by the International President who designated that individual. The Vice Director shall have the right to call for a meeting of the designees and shall be a member of, and the Vice Chairperson of, the US Airways Representation Committee.

(c) The Director and Vice Director will make every reasonable effort to reach decisions by consensus prior to resolving issues as required by Paragraph 10 of the Agreement.

### **ARTICLE III**

#### **ASSOCIATION SYSTEM BOARD OF ADJUSTMENT**

##### **Section 1. CO-CHAIRS OF THE ASSOCIATION BOARD OF ADJUSTMENT**

(a). The Association Director and Association Vice Director, or their designees, shall serve as equal Union Co-Chairpersons of any Boards of Adjustment established, pursuant to 45 U.S.C. § 184 of the Railway Labor Act, as amended, between the Association and the carrier.

(b) For all disputes brought before a Board of Adjustment that primarily involve or relate to employees represented by the CWA, pursuant to Section 3 or

7 of the Association Agreement, the CWA-Appointed Director or Vice Director, or his designee, shall serve as the Union Chairperson of the Board of Adjustment hearing that dispute.

(c) For all disputes brought before a Board of Adjustment that primarily involve or relate to employees represented by the IBT, pursuant to Section 4 or 7 of the Association Agreement, the IBT-Appointed Association Director or Vice Director, or his or her designee, shall serve as the Union Chairperson of the Board of Adjustment hearing that dispute.

(d) For all disputes brought before a Board of Adjustment that present issues common to all employees represented by the Association at a given airline, the Association Director, or his or her designee, shall serve as the Union Chairperson of Board.

## **Section 2. GRIEVANCES**

(a) All grievances filed on behalf of the Association by the CWA or by CWA represented employees shall be processed up to the Board of Adjustment level by the CWA. Expenses related to such grievances up to and through the Board of Adjustment level shall be borne by the CWA, subject to subparagraph (c) below.

(b) All grievances filed by on behalf of the Association by the IBT or by IBT represented employees shall be processed up to the Board of Adjustment level by the IBT. Expenses related to such grievances up to and through the Board of Adjustment level shall be borne by the IBT, subject to subparagraph (c) below.

(c) For all grievances and arbitrations that present issues common to all employees represented by the Association, the payment of exceptional expenses shall be considered by the Director and Vice Director, or their designees, and allocated between the IBT and CWA according to their decision.

**ARTICLE IV**  
**NEGOTIATING COMMITTEE**

**Section 1. ESTABLISHMENT OF A NEGOTIATING COMMITTEE**

There shall be established a Negotiating Committee of the Association whose purpose is to engage in collective bargaining with the employer of the employees represented by the Association.

**Section 2. COMPOSITION OF THE NEGOTIATING COMMITTEE**

(a) The Association Director, or his or her designee, shall be the Chairperson and Chief Spokesperson of the Negotiating Committee.

(b) The Association Vice Director, or his or her designee, shall serve as the Vice Chairperson of the Negotiating Committee, and shall perform the duties of the Chairperson and Chief Spokesperson of the Negotiating Committee in the absence of Association Director.

(c) Apart from the Chairperson and Vice Chairperson, the Negotiating Committee members shall be comprised of an equal number of appointees of the CWA International President and of the IBT General President. The Committee will make and formulate bargaining positions by consensus, and will subject issues to a Committee vote only on the recommendation of both the Chairperson and Vice Chairperson or their designees. The Chairperson and Vice Chairperson of the Committee will not participate in this vote. The Chairperson and Vice Chairperson may designate staff, research, legal or other expert advisors to advise the Negotiating Committee.

(d) No Tentative Agreement may be reached without the agreement of both the Chairperson and the Vice Chairperson or their designees. No Tentative Agreement will be submitted to a ratification vote without the agreement of both the Chairperson and the Vice Chairperson or their designees. In the case of disagreement over whether a Tentative Agreement may be reached or any other

unresolved issues, the dispute will be resolved in accordance with the provisions of Paragraph 10 of the Agreement.

(e) Ratification of Agreements shall be by a majority vote of the Passenger Service Class and Craft of US Airways, and all such ratification votes shall be conducted by the American Arbitration Association, or other neutral third party selected by agreement of the Association Chairperson and Vice Chairperson, and shall be conducted by a telephonic and electronic (email or internet) process, covering the same period of time for all eligible voters, and the AAA or other selected neutral third party shall announce a single system-wide vote tally announced at the end of the voting period.

(f) Strike Authorization votes shall be by a majority vote of the Passenger Service Craft and Class of US Airways, and all such authorization votes shall be conducted by the American Arbitration Association, or other selected neutral third party, and shall be conducted by a telephonic and electronic (email or internet) process, covering the same period of time for all eligible voters, and the AAA or other agreed-upon neutral third party shall announce a single system-wide vote tally announced at the end of the voting period.

(g) Any strike payments, subsidies or reimbursements shall be made according to the rules and processes of the union representing the facility or location on strike.

## APPENDIX B

This Appendix describes the geographic distribution of states for the purpose of defining ASSOCIATION representation of US Airways stations and/or facilities.

1. Unless otherwise specified in the Agreement, the Organization listed below shall be entitled to represent, through the Airline Customer Service Employee Association, IBT-CWA, employees at any stations or facilities within the designated states listed below.

<u>CWA</u>		<u>IBT</u>	
Alabama	Missouri	Alaska	Nevada
Arkansas	N Carolina	Arizona	New Mexico
Connecticut	New Hampshire	California	North Dakota
DC	New Jersey	Colorado	Oklahoma
Delaware	New York	Hawaii	Oregon
Florida	Ohio	Idaho	South Dakota
Georgia	Pennsylvania	Iowa	Texas
Illinois	Rhode Island	Kansas	Utah
Indiana	S Carolina	Minnesota	Washington
Kentucky	Tennessee	Montana	Wyoming
Louisiana	Vermont	Nebraska	Wisconsin
Maine	Virginia		
Maryland	West Virginia		
Massachusetts	Puerto Rico		
Michigan	U.S.V.I.		
Mississippi			

2. Future locations of Reservations Centers, Dividend Miles Service Centers (Frequent Flyer Program Service Centers), and Baggage Call Centers which may be established after the effective date of this agreement, and before

December 31, 2012, will be considered subcontracted work which the existing CWA / US Airways Collective Bargaining Agreement requires the company to return to CWA represented locations and as such will become represented by CWA.

3. Future locations of Reservations Centers, Dividend Miles Service Centers (Frequent Flyer Program Service Centers), and Baggage Call Centers which may be established after December 31, 2012, will be assigned representation on an alternating basis, the first such center to be represented by the IBT, the next such center to be represented by the CWA, then the IBT, then the CWA, and so on.