In the Matter of the Mediation to Finality Between:

FEDERAL AVIATION ADMINISTRATION

AND

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION

Hearings held July 6, 2009

Before the Panel[1]:

Jane Garvey, Chairman
Richard Bloch, Esq.
Dana Edward Eischen, Esq.

Appearances:

ON BEHALF OF THE FEDERAL AVIATION ADMINISTRATION:

Harry A. Rissetto, Esq., Morgan, Lewis & Bockius LLP
Henry P. "Hank" Krakowski, CEO, Air Traffic Organization
Michael Doherty, Esq., Office of Chief Counsel
Richard J. "Rick" Ducharme, V.P., Air Traffic Organization
Mark House, Financial Analyst
Shelly Mlakar, LER Specialist

ON BEHALF OF THE NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION

William W. Osborne, Jr., Esq., Osborne Law Offices
Patrick Forrey, President, NATCA
Eugene R. Freedman, Esq., Deputy General Counsel
Dean Iacopelli, Facility Representative
Garth G. Koleszar, Facility Representative
Barry Krasner, Executive Director
Andrew Lebovidge, Facility Representative

[1] George H. Cohen, Esq. was originally appointed to serve as a Panel Member. When, as the result of an impending Presidential appointment as FMCS Director, Mr. Cohen withdrew, Mr. Eischen replaced him as a Panel Member, pursuant to the terms of the MTF document. At the request of the parties, Mr. Cohen agreed to serve as an expert resource to the Panel. All participants to the process express their profound thanks for Mr. Cohen's extraordinary service.

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OPINION OF THE PANEL

INTRODUCTION

The Award in this case is the product of the final step of a jointly-bargained "Mediation to Finality" process (hereinafter, occasionally, "MTF"), adopted by the Federal Aviation Administration ("FAA") and the National Air Traffic Controllers Association ("NATCA") on May 12, 2009. [Exhibit 1]. As the name implies, the dispute resolution mechanism began with an extended series of mediation sessions that produced broad agreement on a wide variety of subjects. The MTF Agreement marked the critically important first step taken by these parties in their joint commitment to forge a new, more productive, relationship.

In 2006, these parties failed in an attempt to achieve a mutually bargained successor to the then-existing "Green Book". Subsequently, management imposed its own version of all conditions of employment. That so-called "White Book" contained numerous provisions that served, from 2006 to 2009, as the terms and conditions of employment for bargaining unit employees; ranging from the trivial to the essential. Some provisions addressed work rules related to the daily business of running this highly complex shop. Others were economic

take-backs, in the name of fiscal prudence, that constituted unprecedented draconian reductions in compensation, bordering on the unconscionable.

The "WhiteBook" included the following preamble, evidently imported wholesale by the Agency from the negotiated 2003 ("Green Book") Labor Agreement:

> *This Collective Bargaining Agreement is designed to improve working conditions for air traffic controllers, traffic management coordinators/specialists and US NOTAM Office (USNOF) specialists, facilitate the amicable resolution of disputes between the Parties and contribute to the growth, efficiency and prosperity of the safest and most effective air traffic control system in the world.*
>
> *The true measure of our success will not be the number of disagreements we resolve, but rather the trust, honor and integrity with which the Parties jointly administer this Agreement.* [2].

Whatever else may be said of the White Book document, it is neither a "Collective Bargaining Agreement" nor an "Agreement." The abrupt imposed changes in working conditions from the collectively negotiated Green Books to the unilateral White Book was so profound, and spawned so much hostility and distrust, that the labor-management relationship since has degenerated into a state of dysfunctionality.

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[2] This hortatory language, stands as a monument to wishful thinking. Among other things, unilateral imposition of this document generated more than 450,000 grievances which, to this day remain unresolved. Whether or not it resulted in improved working conditions and contributed to growth, efficiency and prosperity are matters of open, continuous, vigorous and very heated debate between the parties.

We note, with approval and relief, that the Parties reached tentative agreement [TA]on the same language as the Preamble to their new Collective Bargaining Agreement. We have incorporated by reference that TA (and all others) as our Award in this case, which means the Preamble language is, once more, accurate.

Having considered the deteriorated relationship of these parties, the damage inflicted by continuing personnel warfare, and the substantial stakes in maintaining a safe and efficient air traffic control system, the Obama Administration intervened. In March 2009, the undersigned Panel was appointed to explore ways by which the parties could confront, and hopefully ameliorate, the existing situation. As its first order of business, at the direction of the Chair, the Panel drafted and presented to the parties a unique "Mediation to Finality" process that involved a series of extended meetings to review each and every one of some 130 specific Articles in dispute.

The parties were admonished to remain focused on the substance of the various issues, eschewing easy and often unnecessarily divisive objections based on form and process. The parties responded with grace, good faith, creativity and remarkable endurance. Through an extraordinary series of long, sensitive and difficult mediation and negotiation sessions, over a period of more than three months, the bargaining representatives reviewed, discuss and, most significantly, mutually resolved matters of extreme sensitivity; including many which had divided the camps even before the remarkably traumatic era of Imposed Work Rules.

The bargaining teams themselves are to be credited with major successes in finding common ground on some 120 of the disputed items.[3] Particular thanks is due, from this Board, to the efforts of Rick Ducharme and Pat Forrey, who

[3] See Attachment 1 of the Decision of the Panel, which contains the tentative agreements.

played essential and effective roles in guiding this part of the process to its successful conclusion.

Notwithstanding the vigorous and extremely fruitful efforts of the bargainers, however, there remained a small number of Articles where common ground could not be achieved.[4] In accordance with the precepts of the MTF agreement, those matters were submitted for final resolution by the Panel. The decision that follows may properly be characterized as a compromise, subject immediately to the *caveat* that we have not engaged in an exercise of "splitting the baby." It has not been the goal of this Panel, nor is it our proper function, to somehow achieve mutual happiness – that is rarely the concomitant of a bargaining process.

In this particular process, both sides have found good reasons for yielding strongly defended positions on deeply held tenets, in order to arrive at a comprehensive mediated to finality resolution of their differences. The common goal, which has been achieved through these mutual efforts, is a new Agreement which serves to bring these parties back from an ill-considered and ultimately destructive era of lop-sided unilateral administration and reinvigorate a functional relationship premised on mutuality and collective bargaining.

Predictably, the years since the birth of the White Book have been characterized by a steady drumbeat of protest from the Union, which has sought, in many venues, to voice its claim that the White Book, as an operating

[4] See Attachment 2

document, is void *ab initio*. In that vein, the Union has vigorously urged this Panel to compensate affected bargaining unit members for White Book reductions of money and prerogatives, by "reinstating the Green Book and by making whole members affected by the imposed rules, including full retroactivity on all economic losses".

Management, for its part, took a markedly narrower view of the issues in dispute; advocating from the outset that any future movement must be premised on the proposition that one takes the validity of the White Book as a starting point.

We reject both these backward-looking assumptions. This Mediation to Finality process began with and proceeded throughout on the premise that the parties and the Panel were working from a clean slate with an eye toward constituting a new, bargained relationship that will enable the parties to move forward as joint stewards of a *bona fide* labor agreement. As such, that process and this Award are designed and intended to set to rest any remaining questions of White Book/Green Book vitality.

From the start, this Panel has proceeded with an announced goal of achieving mutual agreement when possible and, when it was not, of rendering a decision that approximates, in our best judgment, the result the parties themselves would have achieved had they bargained all issues to a mutually satisfactory conclusion. More than mere speculation on that bargaining process, the Award represents our collective judgment as to how this labor relationship

should best be shaped by the application of reason and sound principles of labor relations to each of the issues that remained in dispute.

It is common to view an interest arbitration process as the product of the parties' failure to manage the give and take requisites that are the cornerstones of the collective bargaining relationship. In this case, however, the existence of this particular dispute resolution procedure is properly viewed as a significant, even momentous, achievement by the respective bargaining teams. The current process marks a change or, more accurately stated, the opportunity to change. Successful consummation of this relationship will require both parties committing to achievement of just that.

This Award is not a perfect resolution – it could not be. Even had the parties themselves resolved all rather than the majority of issues bilaterally, the result would have been one of compromise. The perfect compromise would have left segments of each group with less than they had hoped. However, the significance of all that they did accomplish in negotiations and their joint recognition of what they are capable of doing together, will enable the parties to proceed with the critical task of rebuilding the relationship.

No one to this process assumes the relationship will somehow be healed overnight. Without question, there will be elements of dissatisfaction going forward, if for no other reason that no one achieved exactly what they wanted. But the existence of this dispute resolution process signals recognition by the leadership of these parties that there is a relationship worth maintaining, that

this is a joint responsibility and that, significantly, the parties are capable of taking the necessary steps, jointly, to resolve their problems, as they have done in this case.

PROVISIONS RELATING TO ECONOMICS

Central to the compensation structure under the Green Book was the existence of "Pay Bands" encompassing the entirety of the workforce and establishing a comprehensive wage structure. In the imposed White Book, these negotiated Pay Bands were dropped by the Agency and replaced with a compensation structure which substantially devitalized the salary levels of bargaining unit members. The Panel concludes that:

I. PAY BANDS

1. Effective Jan. 1, 2010, new pay bands shall be established, in accordance with the schedules set forth in Attachment 3.

2. Pay Bands are to be adjusted upward on an annual basis in January 2011 and 2012, in a manner equivalent to the adjustment provided to employees covered by the FAA Core Compensation Plan.

II. ADJUSTMENTS TO BASE PAY

Annual raises to base pay will be Three Per Cent (3%) on January 2010, 2011 and 2012, in accordance with Article 108, Section 8. [Attachment 2]

III. EQUITY ADJUSTMENT

A designated group of some 1440 Controllers who were hired prior to October 2006, to be identified by the parties, shall receive, in June of 2010, a 1-time 8% upward adjustment to Base Pay, in accordance with Article 108, Section 8 [Attachment 2].

IV. DEVELOPMENTAL PAY SETTING

All new hires, rehires or employees transferring after the effective date of this Agreement will transition through the applicable Developmental Pay Progression stages as established by the Agency. For pay setting purposes, employees will be paid the AG rate plus the following percentages of the difference between the AG pay band minimum and the CPC pay band minimum as they successfully complete each stage: Developmental-1 (D1) shall be 25%, Developmental-2 (D2) shall be 50%, Developmental-3 (D3) shall be 75% and CPC shall be the CPC band minimum. Progression upward to the next developmental stage will be to the minimum of the next developmental pay band or 6% of their basic pay, whichever is higher. [See Appendix B].

SPECIAL GRIEVANCE PROCEDURE

The parties agree that the FAA/NATCA grievance procedure is in a perilous state. By rough count, there are some 450,000 unresolved grievances extending back to somewhere in the mid-1990's. Many of them appear to be *pro forma* complaints inspired by the imposed working conditions in 2006 and many of those are likely to be mooted by the Collective Bargaining Agreement resulting from the 2009 mediation process. There will, however, remain thousands of contractual and disciplinary matters throughout the Country that have languished unattended for as long as 10 to 15 years.

There is no question this backlog must be addressed and remedied. Failure to do so seriously challenges the integrity of the dispute resolution system, the morale of the workforce and, ultimately, the ability of the agency to deal with workplace disputes in-house.

In addressing the backlog, several essential factors must be recognized:

1. Each and every grievance must be given a fair, in-depth review.

2. The parties must be prepared to discuss and resolve disputed matters aggressively; with the mutual aims of achieving fair resolution while avoiding arbitration and litigation, if at all possible.

3. The system shall include active participation of a neutral mediator/arbitrator(s). Mutually acceptable and experienced neutral(s) can bring insights and offer suggestions to aid the Board in resolving individual cases and ensuring that matters receive the appropriate scrutiny to achieve a reasoned result.

Arbitration Review Board

The Arbitration Review Board ("ARB" or "Board") shall be comprised of two high-level officials, one from the Union and one from the Agency, together with one or more neutral Mediators/Arbitrators appointed by the Chair of the Panel of Neutrals. The dispute resolution neutral member will chair the Board and the Agency and Union members will be vested with authority to discuss and sign off on all cases brought before the ARB.

ARB Meetings

The ARB will meet once monthly. Prior to the meeting a set number of files chosen by the Union will be circulated to each of the ARB members, for a brief review before discussion at the meeting. As a general matter, files will be chosen on a FIFO basis, but either party may request that the Board deal with urgent matters.

The ARB will convene in a mutually convenient location and review the files together. There will be no presentation of evidence or formal arguments.

Following a brief discussion of the case, the mediator will offer his or her opinion as to the appropriate disposition of the case.

ARB Jurisdiction

The ARB shall have jurisdiction over all cases arising prior to August 6, 2009, and shall be authorized to consider and render decisions on the merits of the cases as well as on all questions of substantive and procedural arbitrability.

In rendering its decisions, which shall be binding on the parties, the Panel shall be authorized to consider the terms of the applicable labor agreements and work rules in effect at the time the claimed violation arose, as well as applicable Federal Law.

ARB Authority

The Board is authorized to issue awards containing a wide variety of possible resolutions:

1. Dismiss the case without prejudice.
2. Dismiss the case with prejudice.
3. Grant or deny the grievance on the merits.
4. Settle the grievance on a non-precedential basis.

In cases where the Board concludes that the interests of all parties will be best served, the Board is authorized to propose a non-precedential monetary settlement to the parties. If the parties accept the proposal as a full and final

settlement of the grievance, the individual non-precedential monetary settlement proposal will be honored by the Agency and will set the matter to rest.

5. Refer the matter to a full arbitration hearing before another neutral selected by the parties through their normal grievance procedure.

In all cases, ARB Decisions will be signed by the Neutral Panel Members only.

Panel of Neutrals

During the term of this Agreement, the Panel of Neutrals shall be composed of:

- Jane Garvey, Chair
- Richard I. Bloch
- Dana Edward Eischen

A neutral member of the Panel may be removed by agreement of both parties. Additional Panel members may be added with the agreement of both parties.

The Chair of the Panel is authorized to convene the Panel *en banc* or to assign individual panel members to hear cases.

Within 60 days following the decision of this Panel, the parties will jointly review and assess the status of the backlog, and report to the Panel on their progress in implementing the Triage/Adjustment system established by this decision.