BEFORE THE ALASKA AIRLINES - AMFA
SYSTEM BOARD OF ADJUSTMENT

In the Matter of:	)	**ARBITRATOR'S**
ALASKA AIRLINES, INC.	)	**SUMMARY**
and	)	**OPINION**
AIRCRAFT MAINTENANCE FRATERNAL ASSOCIATION, LOCAL 32	)	**AND**
	)	**AWARD**
(Letter of Agreement No. 9)	)	(Expedited Arbitration by Stipulation of the Parties)

System Board of Adjustment:	Fredric R. Horowitz, Esq., Neutral Member Bob Hartnett, Company Member Jarod Mills, Union Member
Appearances:	
Company:	N. Joe Wonderly, Esq. and Rebecca Meissner, Esq. Senior Attorneys, Alaska Airlines, Inc.
Union:	Nicholas P. Granath, Esq. Seham, Seham, Meltz & Petersen LLP
Hearings Held:	August 18. 2020 (Via Zoom Videoconference)
Submitted to Board:	September 5, 2020
Executive Sessions:	September 10, 2020 and September 18, 2020

This expedited arbitration arises by stipulation [JX 1] of Alaska Airlines, Inc. ("Company" or "Alaska") and Aircraft Maintenance Fraternal Association, Local 32 ("Union" or "AMFA") under their collective bargaining agreement dated October 17, 2016 ending October 17, 2021 ("Agreement") [JX 2]. The parties concur the matters at issues are properly before this System Board of Adjustment for decision [JX 1].

MATTERS AT ISSUE

At the outset of these proceedings, the parties stipulated to the following statement of the issues to be decided [JX 1]:

1. As between the contentions of the parties over the meaning of Letter of Agreement No. 9 made in the hearing and in closing briefs, the Board shall declare its interpretation, which interpretation shall then be binding upon the parties.

2. In addition, if the Board concludes that LOA #9 prohibits the Company from "bump[ing] or furlough[ing]" all active technicians based at LAX, SEA, SAN, SFO, PDX and JFK (the "Protected Stations") through October 17, 2023, then the Board shall go on to answer the following: Whether a Technician who is furloughed from any other station may exercise seniority into a Protected Station if no junior employee can be displaced and there are no vacancies in the Protected Station?

In the course of the hearing, the parties agreed to refine Issue No. 1 with separate proffers, and stipulating the Arbitrator would have the authority to determine the precise statement of the issue after the case was submitted for decision [TR 101-102].

The Union's proffer:

1. Interpreting LOA #9, does Paragraph 4. stand-along without the exceptions in Paragraph 2. applying?

The Company's proffer:

1. Did the parties intend for the language in Section 7. of the Transition Agreement protecting Technicians in SEA, LAX, PDX, JFK, SAN, and SFO from furlough or bumping to be subject to the exceptions set forth in Para. 4. of LOA #9?

Based upon the entire record, the issues to be decided are determined to be as follows:

1. Are the provisions of Paragraph 4. of LOA #9 subject to the *force majeure* provisions of Paragraph 2. of LOA #9?

2. If not, may a Technician who is furloughed from any other station exercise seniority into a Protected Station if no junior employee can be displaced and there are no vacancies in the Protected Station?

BACKGROUND

The Company and the Union have a collective bargaining relationship dating back to 1998. In 2004, nearly half of the AMFA bargaining unit was furloughed. In 2005, the Union was able to negotiate job security protections for members at designated stations as provided in LOA #11 [CX 5]. LOA #11 was retained as amended in successive contracts and ultimately renumbered LOA #9.

In 2016, Alaska acquired and merged with Virgin America. The respective Boeing and Airbus maintenance operations remained separate until a Transition Agreement ("TA") could be reached between the Company and the Union. Over the next two years the parties reached two TA's, but each was voted down by the AMFA membership. By May 2019, the Company and the Union renewed their efforts to achieve an agreement. At the bargaining table, the Union voiced the concerns of legacy Alaska Technicians who feared the merger was going to harm their seniority and job security. The Company understood that additional job security for Technicians would be needed to secure membership ratification of the TA.

In the course of interest-based bargaining, the Company readily agreed to add JFK as a station protected in Paragraph 1. of LOA #9 [UX 6]. The Union then sought removal of the sunset date of the protections in Paragraph 1., but the Company resisted that change. The Union countered with a sweeping proposal prohibiting all Technicians at any station from being involuntarily displaced during the term of the Agreement. The Company resisted this change as well. The Union then modified its proposal to LOA #9 to that at issue here, namely, a prohibition from bumping or furloughing any active Technician at designated stations where the Company maintains a dual Boeing and Airbus operation [UX 6]. The substance and significance of the discussions at the table about how this proposal was intended to apply is sharply

disputed herein. Ultimately, the Company agreed to add the protections to LOA #9, and the TA was ratified by the AMFA membership [UX 6, CX 6]. In the course of updating the basic Agreement with the amendments adopted in the TA, the Company without discussion placed the new job security protections in a new Paragraph 4. to LOA #9. The Union did not comment on or object to this placement. LOA #9 was then signed by the parties on January 23, 2020, and backdated to December 18, 2019 [CX 7, JX 2].

Thereafter, the instant controversy arose as the product of the economic disruption caused by the global COVID pandemic plaguing the travel industry. On June 1, 2020, the Company announced the possibility of a 35% reduction in the Company's workforce [UX 1]. On June 4, 2020, the Union notified management that it would insist the job security provisions in LOA #9 be observed and should the Company disagree demanded expedited arbitration before any furlough is implemented [UX 1]. Ensuing discussions confirmed the parties held irreconcilable differences as to the scope of job security in LOA #9 and its application in the event of a furlough. On July 6, 2020, the Company agreed with the Union to present this dispute for expedited hearing and resolution by the System Board of Adjustment.

At arbitration, the parties were afforded a full opportunity to call and cross-examine witnesses under oath, introduce documents, and present argument. A transcript of the proceedings was prepared. Upon receipt of post-hearing briefs, the issues were submitted to the Board for decision. No useful purpose is served in detailing the voluminous record of evidence and argument, all of which has been carefully reviewed and considered. In view of the joint request for an expedited decision, this opinion merely identifies the factors deemed critical by the Arbitrator in resolving the issues presented.

EXCERPTS FROM THE AGREEMENT [JX 2]

ARTICLE 9 – SENIORITY

K. When it becomes necessary to reduce the number of employees in any classification covered by this Agreement, the Company will reduce the employees in that classification with the least seniority at the affected station in any given bid location. Prior to a reduction in force of five (5) or more employees, or more than twenty percent (20%), at a station, the Company will meet with the Local Airline Representative(s) to discuss their plans including any possible relocation impact to affected Employees. The discussion may include whether additional relocation assistance should be considered beyond what is identified in Article 15.C.1. In the

event of the layoff of employees who have completed their probationary period, two (2) calendar weeks' notice (or such longer period as may be required by law) shall be given by the Company, or pay in lieu thereof, with a copy of such notice furnished to the Local Airline Representative(s) and to the AMFA National Administrative Office. If employment is temporarily interrupted because of a strike or picketing of Company premises, an act of God, a national war emergency, revocation of the Company's operating certificate(s), or grounding of the carrier's aircraft by government order, the notice will not apply. The employee(s) affected by a reduction in force must within seven (7) calendar days give written notice on a furlough option sheet to the Company and the Union exercising his seniority in the following manner or his name shall be stricken from all seniority lists. Reference paragraph M.1.

1. He must displace the most junior employee in his current classification in any bid location at his station, or accept a vacancy in his current classification at his station.

2. If unable to exercise his current classification seniority in his own station, he must further exercise his seniority by one of the options outlined below.

a. Displace the most junior employee at any station in his current classification on the System. Employee(s) who have exercised their seniority by this paragraph will have first right of recall to the station from which they were furloughed.

b. Displace the most junior employee in any classification in which he holds seniority at his station, or accept a vacancy in any classification he holds seniority in at his station.

c. Provided the employee is unable to exercise seniority in b. above, he may displace the most junior employee at any station in any classification in which he holds seniority or accept a vacancy in any classification in which he holds seniority. This option will entitle the employee to first right of recall to the station from which he was furloughed.

d. An employee may go on layoff status at the station where affected by a reduction in force, providing he has exercised seniority to fullest extent possible in any classification of technician or higher at his station. An employee who is unable to exercise seniority in a technician classification and holding seniority in a lower classification may elect to go on a layoff status rather than exercise seniority in a lower classification, in which event he shall lose severance pay and seniority in all classifications lower than that of technician.

LETTER OF AGREEMENT NO. 9

WHEREAS, Alaska Airlines, Inc. (the "Company") and the Aircraft Mechanics Fraternal Association ("AMFA") desire to establish job security for the presently active members of the bargaining unit,

NOW, THEREFORE, the parties agree:

1. Effective on December 18, 2019 through October 17, 2023, the Company will not subcontract any scheduled line maintenance work currently performed by AMFA employees in Anchorage, Juneau, Seattle, Portland, Oakland, San Francisco, Los Angeles, Phoenix, Las Vegas, San Diego, Orange County, Sacramento, San Jose, and New York City (JFK) nor will the Company lower the classification of any of the above stations in the GPM, provided Alaska Airlines continues to operate at that station. Additionally, the Company will not subcontract any aircraft maintenance to McGee Air Services, Inc. The Company further agrees that during the above stated period, the Company will refrain from layoffs (i.e., where no bumping rights) of any AMFA-represented employee, who is actively employed or on an approved leave of absence as of the December 18, 2019 of signing of this Agreement. No other individuals shall enjoy any rights under this Letter of Agreement.

2. Provided, however, the Company shall be excused from compliance with the above "no-layoff" provision:

a) to the extent that a circumstance over which it does not have control is the cause of such non-compliance. The term "circumstance over which it [i.e., the Company] does not have control" includes a natural disaster; an act of terrorism; work disruption or stoppage that prevents the Company from operating its planned schedule for thirty (30) days or more; grounding of a substantial number of the Company's aircraft by or through the actions of a government agency; reduction in flying operations because of the unavailability of an adequate fuel supply; revocation of the Company's operating certificate; or military action or a national emergency that prevents the Company from operating its planned schedule for thirty days or more.

b) in the event economic conditions result in the Company reducing the number of operating aircraft and/or capacity by 10% or more, (excluding seasonal fluctuations, as measured in available seat miles) for a duration of 120 (one hundred and twenty) days or longer. Affected technicians will be recalled in accordance with Article 9 commensurate to the rate of aircraft and/or capacity returned to service. However, in no instance, will the percentage reduction of Technicians exceed the percentage reduction in aircraft and/or capacity.

3. The parties affirm that the duration stated in paragraph 1, above, shall be subject to extension hereafter only upon the mutual, written agreement of the Company and AMFA. The parties specifically agree that, absent such an extension agreement, the protections afforded employees by this Letter of Agreement shall be deemed to expired on date (one day prior to amendable date) and AMFA will not assert otherwise in any forum on any basis (contractual or legal), including but not limited to an assertion that the furlough restrictions set forth in this Letter of Agreement are or can somehow be extended by the status quo provisions of the Railway Labor Act, 45 U.S.C. § 156.

4. In addition, all active Technicians based at LAX, SEA, SAN, SFO, PDX, and JFK (stations with dual Boeing and Airbus maintenance operations) employed as of the Transition Agreement Effective Date or hired before October 17, 2023 will not be bumped or furloughed from the Transition Agreement Effective Date through the amendable date of October 17, 2023.

This Letter of Agreement shall become effective on the December 18, 2019. It shall remain in full force and effect according to its terms as above-stated. [Underline in Original.]

SUMMARY OPINION BY THE ARBITRATOR

The task of a System Board in any dispute over the interpretation and application of the provisions in a collective bargaining agreement is to ascertain and apply the mutual intent of the parties. It is well settled the most reliable indicator of mutual intent is the words used by the parties in their labor contract. Where the terms of a disputed clause are clear, the Board will give full effect to the meaning of those terms. If the language is found to be ambiguous or susceptible to conflicting interpretations, the Board will look to other common indicators, such as bargaining history and past practice, to ascertain the mutual intent of the parties. Should all of these factors fail to reveal mutual intent, the Board must then determine the most reasonable interpretation of the disputed provisions in light of all the circumstances presented.

Issue No. 1

The first issue to be decided is whether the *force majeure* exceptions in Paragraph 2. of LOA #9 apply to the job security provisions negotiated in the Transition Agreement and placed by the parties in LOA #9 as a new Paragraph 4. The Union contends the introductory proviso to Paragraph 2. stating, "the Company shall be excused from compliance with the above 'no layoff' provision" unequivocally limits application of the *force majeure* exceptions to the job security provisions in Paragraph 1. The Union thus maintains the enhancements to job security negotiated in 2019 cannot be subject to the *force majeure* exceptions in Paragraph 2. based on the plain language of those provisions. In contrast, the Company asserts the job security provisions added to LOA #9 in 2019 were never intended by the parties to be exempt from *force majeure*. Accordingly, the Company argues this mutual intent cannot be superseded by a drafting error in placing those protections in Paragraph 4. rather than in Paragraph 1. where they belong.

Review of the applicable provisions confirms the plain language of the parties' Agreement supports the position of the Union. As claimed by the Union, the *force majeure* provisions in Paragraph 2. apply by their own terms only to the job security protections set forth "above" in Paragraph 1. The fact the job security added in 2019 was placed by the parties in a

separate numbered paragraph below which is "in addition" to the provisions in Paragraphs 1.-3. is consistent with this interpretation. Based on this plain language, an interpretation of LOA #9 which infers the job security protections in Paragraph 4. are or should be subject to the *force majeure* exceptions in Paragraph 2. cannot be sustained.

The Company nonetheless insists the interpretation urged by the Union was never intended by the parties and makes little sense given the economic realities occasioned by the pandemic. Had *force majeure* been raised and acknowledged during bargaining when the job security protections were negotiated in 2019, the Company's argument would have traction. But the application of Paragraph 2. to the additional protections was not discussed or considered by at the table by either party in those negotiations. From this evidence, it cannot be found a shared intent was formed as claimed by the Company which is contrary to the plain language of those provisions.

A similar difficulty besets the Company's contention that placement in Paragraph 4. should be overlooked as a mere mistake in drafting. Errors in contract language may be reformed by a System Board, but in order to do so the mistake must be shown to have been mutual. In this case, the precise placement of the provision in LOA #9 was never discussed at the table, and there is no evidence the Union during bargaining manifested any intent to have these provisions subject to a *force majeure.* The parties engaged in interest-based bargaining in 2019. Neither party was shown to be the sole "drafter" of this language against whom any inference may be construed, and each was equally responsible for the placement of the new protections in Paragraph 4 rather than Paragraph 1. Given these facts, a finding of mutual mistake in drafting sufficient to overcome plain contract language has not been established in this case.

Issue No. 2

Because the provisions of Paragraph 4. are found not to be subject to the *force majeure* exceptions in Paragraph 2., the parties have asked this Board to determine the impact if any of the new job security protections on the seniority provisions of Article 9 K. of the Agreement in the event of a reduction in force. The Union contends any Technician furloughed from any other station may exercise seniority into a Protected Station even if no junior employee can be displaced and there are no vacancies at that location. The Union cites discussions at the bargaining table to support its view the job security provisions added in 2019 would be ren-

dered meaningless if a contrary interpretation were to be adopted. For its part, the Company sharply disagrees by maintaining there is no language in LOA #9 superseding the plain language in Article 9 K.2. providing that a furloughed Technician may exercise seniority into another station only if there is a vacancy or displacement of the most junior employee. The Company insists the parties did not agree to modify Article 9 K. in this regard at any time during the negotiations of the Transition Agreement.

In the event of a reduction in force, Article 9 K. prescribes the options for a Technician to exercise seniority to avoid a layoff. If the Technician does not have the seniority to displace a junior employee or hold a vacancy at his or her current station, Article 9 K.2. allows the Technician to displace the most junior employee (in an appropriate classification) at any station. A plain reading of this provision supports the view urged by the Company that any exercise of a displacement right necessarily entails removal of the junior occupant from the target position. No language was added to the Agreement addressing the impact of Paragraph 4. of LOA #9 on the seniority provisions in Article 9 K. in the event of a furlough. Thus, for the Union to prevail, the evidence must establish a mutual understanding was reached during bargaining of the TA in 2019 to allow a senior Technician furloughed from another station to transfer to a Protected Station without laying off the junior employee.

The Union contends this mutual understanding was indeed achieved at the table during those sessions. The evidence confirms the Union gave specific examples of how under this proposal a senior Technician reduced from a station could transfer to a Protected Station without displacing a junior employee for the duration of LOA #9. The Company did not voice any disagreement or resistance at the table to the application of the new job protections in this manner. The Union relied on this understanding confident the Company had agreed the job security protections to be added for Protected Stations in 2019 would not come at the expense of senior Technicians at other locations.

The context of the negotiations of the Transition Agreement in 2019 reinforces a finding of mutual intent as urged by the Union. The Company recognized that additional job security protections for Technicians were essential in order to secure membership ratification of the TA needed to merge the Boeing and Airbus operations. The Union made it clear at the table the protections at Protected Stations ultimately agreed to by the Company would not come at the expense of senior Technicians elsewhere. At that time, the crew complement at the Protected

Stations tended to be understaffed and more junior than those at other locations. Thus, the notion of absorbing senior Technicians from other stations did not seem unreasonable to the parties when discussed. Concerns about *force majeure* were not raised by either party. Given this course of bargaining, it cannot be found the Company had not acquiesced to the Union's insistence that the job security protections added in the Transition Agreement would not come at the expense of senior Technicians at other stations. Accordingly, the Union's position on Issue No. 2. is more consistent with the mutual intent of the parties as manifested in those negotiations than that urged by the Company.

Conclusion

The parties are seeking expedited resolution from the System Board of good faith yet irreconcilable differences about the application of *force majeure* provisions in Paragraph 2. of LOA #9 to the job security provisions in Paragraph 4. of that LOA as well as to the impact if any of those protections on the seniority provisions in Article 9 K.2. of the Agreement. When negotiating the Transition Agreement in 2019, neither party anticipated the massive economic disruptions caused by the global pandemic in 2020. The System Board in these circumstances cannot attempt to presume or conjure what the bargaining parties would have done had the subject been raised in negotiations. Rather, the Board can only interpret and apply the existing contract provisions in a manner consistent with accepted standards of contract construction in light of the unique facts presented.

In Issue No. 1., the evidence supports a finding the job security provisions in Paragraph 4. of LOA #9 are not subject to the *force majeure* provisions in Paragraph 2. based on the plain language of those provisions and the absence of a mutual intent manifested otherwise during bargaining. The conclusion reached in Issue No. 2 that a Technician furloughed from a non-Protected Station could exercise seniority into a Protected Station even though the junior employee could not be displaced is based on a mutual understanding reached during bargaining that the newly added job security provisions would not come at the expense of senior Technicians at other stations. The focus of the parties in this proceeding was on resolution of their competing interpretations, so no evidence was presented to or considered by the Board on the potential impact on the Company and bargaining unit of any possible outcome in this case. The remedy for any perceived inequity or hardship occasioned by this decision thus lies squarely with the parties in the crucible of collective bargaining.

AWARD

1. The provisions of Paragraph 4. of LOA #9 are not subject to the *force majeure* provisions of Paragraph 2. of LOA #9.

2. A Technician who is furloughed from any other station may exercise seniority into a Protected Station if no junior employee can be displaced and there are no vacancies in the Protected Station.

DATED: September 18, 2020
Santa Monica, California

FREDRIC R. HOROWITZ, Arbitrator

BOB HARTNETT
Company Board Member
(Concur/Dissent)

JAROD MILLS
Union Board Member
(Concur/Dissent)