

Contract Class In Session

ASSESSMENT OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS CONTRACT AND THE FLY-TO-WIN HANDBOOK FOR AIRPORT OPERATIONS AGENTS

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212 Damascus Drive, Cedar Falls, IA 50613 (319) 266-95648

*Professor of Economics, University of Northern Iowa,

Cedar Falls, IA 50614-0129 (319) 273-2950

The merger of United and Continental Airlines has created an opportunity for Passenger Service employees of both airlines to elect the International Association of Machinists and Aerospace Workers (IAM) to represent them in an upcoming representation election, governed by the Railway Labor Act and the National Mediation Board. It may be difficult for Continental employees to make this decision, because doing so requires a careful comparison of the wages, benefits, and job rights provided by joining the IAM, to the wages, benefits, and job rights provided by remaining non-union. The purpose of this report is to provide this comparison.

In addition to comparing the IAM Contract to the Fly-to-Win Handbook (revised March 1, 2011), this report also compares key financial measures of United and Continental Airlines just prior to their merger. These financial measures provide an excellent basis for comparing the operations of both airlines just prior to their merger. They are drawn from the U.S. Securities and Exchange Commission and Bureau of Transportation Statistics for the year 2009. The financial measures include management's salary as a percentage of operating revenue, average employee wages, and average employee benefits.

Table 1, "The Report Card," compares the features of the IAM Contract with those of the Fly-to-Win Handbook by assigning a letter grade to each. Figure 1 contains a comparison of the financial measures for each airline just prior to their merger (2009). Each of the major points of comparison is discussed with greater detail below.

Protection of Job Rights

The protection of job rights is the single most important point of comparison between the IAM Contract and the Fly-to-Win Handbook. In this area, the IAM Contract earns a grade of A+, while the Fly-to-Win Handbook gets a grade of F. Management cannot unilaterally change the IAM Contract, but management can change the Fly-to-Win Handbook at any time. Manage-

ment cannot deny any IAM covered employee the rights and benefits contained in the IAM Contract, but management can deny an employee the rights and benefits found in the Fly-to-Win Handbook. The IAM Contract can be enforced in a court of law because it is a legally binding contract, but the Fly-to-Win Handbook is not a legally binding contract. The Fly-to-Win Handbook merely explains the rights and benefits that the airline intends to provide to employees. The IAM Contract explains the rights and benefits that the airline must provide to employees.

So, no matter how generous the rights and benefits found in the Fly-to-Win Handbook might appear, management can take them away at will. In short, the rights and benefits found in the Fly-to-Win Handbook will persist after the merger at the good will of management. But, the rights and benefits found in the IAM Contract can only be changed by management bargaining those changes with the IAM union.

In the current economic conditions, airline companies are struggling. When the company seeks costs savings to remain economically viable, the easiest place to cut is in management and/or employee wages. Because so many of United's workers are unionized, United has been less able to cut employee wages than Continental. In 2009, management salaries ate up 37 percent of Continental's operating revenues, while at United, management salaries used up only 15 percent of its operating revenues. During the same year (2009), an employees' average annual wages at United were \$58,239, while at Continental they were only \$56,799. To a large extent, the higher payments to management and lower employee salaries at Continental were due to the fact that United's employees are more heavily unionized than Continental's employees. Clearly, the protection of job rights under the IAM Contract is vastly superior to the protections provided by the Fly-to-Win Handbook.

Base Pay and Shift Differentials

The wage rates under the IAM Contract and Fly-to-Win Handbook are summarized in Table 1. Overall, neither set of wage rates is very rewarding, but the Fly-to-Win Handbook wages are slightly higher than those found in the IAM Contract. However, future, as well as current wage rates are important. Because management must negotiate with the IAM regarding future wage rates and because management solely determines wage rates for non-union workers, the long term wage rates for

unionized workers is far better than for non-unionized workers. Moreover, in virtually all industries, the wage rates of unionized workers are almost always higher than the wage rates for non-union workers. According to the U.S. Bureau of Labor Statistics (2010), unionized workers earn 28 percent higher wages than non-union workers in the transportation and warehousing sector. So, although the IAM wage rates are slightly below those in the Continental Handbook, the IAM wage rates should soon surpass those provided by the Fly-to-Win Handbook.

Shift differentials can constitute an important part of any worker’s compensation. The IAM Contract provides more generous shift differentials than the Fly-to-Win Handbook. These differentials can make it possible for an employee represented by the IAM to earn as much as 5.7 percent more, simply by working the “graveyard” shift. For newer employees, the more generous shift differential provided by the IAM Contract should be highly valued.

Overtime

Overtime represents another important part of the compensation package. Overtime rates and rules can be very important to many employees, especially as airline companies attempt to cut costs by increasing the work load of employees.

Both the IAM Contract and the Fly-to-Win Handbook contain provisions for overtime compensation. The IAM Contract provides a better overtime rate than the Fly-to-Win Handbook. Both provide time and one-half beyond an eight hour shift. But, for overtime work beyond twelve hours, the IAM Contract provides double-time compensation, while the Fly-to-Win Handbook provides only time and one-half compensation.

However, when it comes to overtime distribution, the IAM Contract vastly exceeds the Fly-to-Win Handbook. Unfortunately, the Fly-to-Win Handbook gives first choice of overtime work to employees willing to accept straight time pay. The IAM Contract requires any employee who works overtime to receive (1) time and one-half (over eight, up to twelve hours) or (2) double-time (over twelve hours) pay.

Overtime bypass payments are also important. The IAM Contract requires payment to employees who are passed over for overtime to be paid at the appropriate rate (straight time, time and one-half, or double time). Instead of extra compensation, the Fly-to-Win Handbook only offers preferential treatment to employees unjustly passed over for overtime assignment. For example, if the bypassed overtime opportunity is on an employee’s day off, the IAM Contract requires the company to make full restitution for the bypassed overtime. The Fly-to-Win Handbook contains no such provisions.

Holidays and Vacations

Both the IAM Contract and the Fly-to-Win Handbook provide eight paid holidays per year. But, the IAM Contract specifies five of these holidays as floating holidays, while the Fly-to-Win Handbook only allows employees two floating holidays. The greater number of floating holidays in the IAM Contract is more generous and provides greater flexibility for employees in the Passenger Service Classification.

Vacation days provided by the IAM Contract are better than those provided by the Fly-to-Win Handbook. Under the IAM Contract, it takes employees one-year to earn two weeks of vacation time; the Fly-to-Win Handbook requires employees to



Figure 1—Comparisons of Financial Data Prior to Merger—Fund the Future, for whom, Management?

work for four years before earning two weeks of vacation time. In addition, the IAM Contract provides employees up to six weeks of vacation time (after 29 years), while the maximum vacation time provided by the Fly-to-Win Handbook is five weeks.

Recall Rights

Both the IAM Contract and the Fly-to-Win Handbook provide employees who lose their jobs due to a reduction in force the right to be called back to work, before the company can hire new employees. However, the recall rights provided by the Fly-to-Win Handbook expire after the lesser of six years or the employee's length of service. The recall rights provided by the IAM Contract have no time limit. Employees with less than six years of service will find the IAM Contract recall rights vastly superior to those of the Fly-to-Win Handbook.

Overall Benefits

Both the IAM Contract and the Fly-to-Win Handbook provide employees with an array of benefits, such as health and dental insurance. Both provide employees with multiple plans from which to choose, so it is difficult to make one-to-one comparisons. However, the average value of these benefits per employee at United and Continental Airlines can be compared using data from just before their merger. According to the Bureau of Transportation Statistics for 2009, the average value of benefits provided to employees at United Airlines was \$22,479, while the average value of benefits provided to employees at Continental Airlines was only \$19,854. The greater benefits at United were largely due to the greater representation of employees by unions.

When benefits start for newly hired employees is one area where direct comparisons are easy to make. The IAM Contract requires benefits to start on the date hired. Employees covered by the Fly-to-Win Handbook have to wait six to nine months for their benefits to start.

Another easy point of comparison is the availability of health insurance to employees who retire prior to being eligible to join Medicare. The IAM Contract requires this coverage with the premium based on years of service. Unfortunately, the Fly-to-Win Handbook is silent on this important point.

Adjusted Seniority

Passenger Service employees are also concerned with the protection of their seniority. Under the Fly-to-Win Handbook,

the seniority of an employee who takes an extended leave of absence is adjusted downward by any leave exceeding 90 days. The IAM Contract is much more restrictive. For example, if two employees take leave for 91 days for the same reason, the employee under the Fly-to-Win Handbook loses one day of seniority, while the employee under the IAM Contract retains his or her full seniority. Even one day of lost seniority can have serious consequences on shifts, vacation, and job protection rights.

Bargaining Power

The Handbook designates all employees as "at-will" workers. At-will workers can be dismissed at any time for any reason that does not violate state/federal laws. At-will workers have the right to quit at any time for any reason. The only bargaining power that at-will employees have is provided by the market place (the right of workers to quit and go to work elsewhere or not to work at all). So, the bargaining power of at-will employees is inversely related to unemployment. When unemployment is high, at-will workers have very little bargaining power, and vice versa.

Federal labor law requires management to bargain with employee unions in good faith. Employees covered by the IAM Contract have vastly more bargaining power than employees covered by the Handbook. The greater bargaining power of the IAM is revealed by the share of operating revenues that go to management and the average wages of employees at United and Continental Airlines just prior to their merger, as shown in Figure 1. Management at Continental pay themselves nearly two and one-half times what management at United receives, while employees at United enjoy average wages that are two and one-half percent higher than employees at Continental. The higher average wages at United are largely due to the greater bargaining power of IAM employees.

Due to the IAM's bargaining power, management will take extraordinary measures to dissuade Continental employees from voting in favor of being represented by the IAM. Although the days of management's hired thugs wielding baseball bats are over, management has discovered other very clever methods to block unions, such as propaganda that presents misinformation and twisted facts that puts the IAM in a bad light. Management can also be very clever in developing propaganda that presents them in a good light. For example,

management might claim that the Handbook constitutes a near or quasi contract. Indeed, the Handbook is organized very much like the IAM contract. Even some of the elements of the Handbook, such as the EIT (Employee Involvement Team) and appeal procedures, appear on the surface to be very similar to provisions in the IAM Contract. But, make no mistake about it, the Handbook is NOT a labor contract; it is a statement of management's policies and procedures, and management can change its policies and procedures at any time. For example, management has the authority to change any part, including the appeal procedures, of the Fly-to-Win Handbook at any time.

The Fly-to-Win Handbook is designed to protect management by discouraging employees from filing civil law suites against the company. Passenger Service employees should be highly concerned with the following sentence found in the Fly-to-Win Handbook: "Team members are employed at-will and agree to look to the appeal policies contained in this handbook as the sole remedy for any dispute and understand that the results of the appeal policy shall be final and binding on both the team member and the company." At first glance, the "binding" aspect of this appeal process seems fair, but it in fact is not fair. The company picks and pays for the arbitrator who decides the appeal. The company can easily hire only arbitrators who are highly pro-management and never hire arbitrators who are fair.

So, even though the Fly-to-Win Handbook is organized to look like a labor agreement with many of the topics typically covered by a labor agreement, the Fly-to-Win Handbook is NOT a labor agreement. It is a statement of management's current policies and procedures that management can unilaterally change at any time. Passenger Service employees do not have the power to say "no" to changes in the Fly-to-Win Handbook that management wants to implement.

The Handbook mentions that management will consult with the EIT when it wishes to change the Handbook. On the surface, the EIT looks like a union. But, of course, the EIT is not a union. The Handbook clearly states, "The Senior Vice-President Airport Operations and the Executive Vice-President of Human Resources must approve [any] changes" to the Handbook. The

EIT can suggest changes, but management is not obligated to adopt these changes. Management can totally disregard the EIT, if it wishes. The only way that a group of employees can have the authority of a union is to go through the very formal process of becoming a union and be recognized by the U.S. Department of Labor as a labor union. The EIT has never been recognized by the U.S. Department of Labor as a labor union.

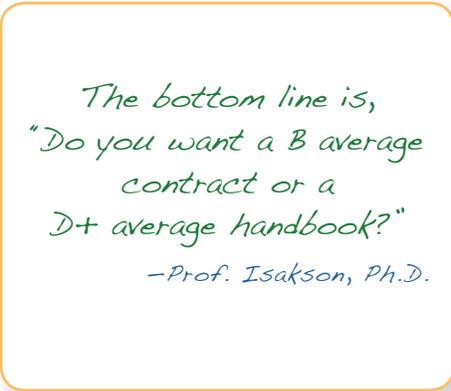
Overall Assessment

In all but one area (base pay), the IAM Contract provides employees better compensation and benefits. But, because IAM represented employees have so much more bargaining power than employees represented by the Fly-to-Win Handbook, in the near future, IAM represented employees' base pay rate will most likely overcome and surpass the base pay schedule provided by the Fly-to-Win Handbook. There is very little doubt

that over the course of their career with the company, employees represented by the IAM Contract will be far better off in terms of compensation and benefits than workers under the Fly-to-Win Handbook. The overall grade point average for the IAM Contract is 3.38 or a solid B, while the grade point average for the Fly-to-Win Handbook is 1.84 or a D+.

The fact that the IAM Contract outperforms the Fly-to-Win Handbook will not go unnoticed by management. In all likelihood, management will take very strong measures to prevent employees from choosing to be represented by the IAM. The amount of management effort to dissuade employees from being represented by the IAM is a good indicator of the degree with which the IAM Contract outperforms the Fly-to-Win Handbook. From management's perspective, a workforce under the Fly-to-Win Handbook means more money for management, while a workforce represented by the IAM means less money for management. Although the economics are very simple, management will take great pains to cloud the issues using various misinformation tactics. The wise employee will vote with his or her pocketbook and insist upon self-preservation. Employees who vote against representation by the IAM risk losing many of their benefits.

The bottom line is quite simple. Do you want a B average contract or a D+ average handbook?



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-Prof. Isakson, Ph.D.*