

AIRLINE ALLIANCES
LEGAL ISSUES AND IMPACT ON COLLECTIVE BARGAINING

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on Collective Bargaining

I. Background Information

A. Which Carriers Are Involved in the Alliances?

The following are but some of the alliances or carrier relationships

"Wings": Northwest, KLM (Continental and Alitalia)
"Star": United, Lufthansa, SAS, Thai, Air Canada, Varig, Air New Zealand, Ansett (and Air Nippon)
"Atlantic Excellence": Delta, Swissair, Austrian and Sabena
"One World": American, British Airways, Canadian, Cathay Pacific, Qantas (and Japan Airlines)
Northwest, Continental (Air China, America West and Alaska)
Continental and Virgin Atlantic
Continental and Air France
Delta and Air France
United and Delta
USAirways and American
Continental and VASP
American and the TACA group of Central American carriers
American and Alaska.

There are numerous additional alliances between major carriers and regional "feeder" carriers (e.g., Northwest with Mesaba and Express I).

B. What do the Alliances Involve?

The specifics of the carrier relationships vary from alliance to alliance. Areas of commonality that are found in the alliances include some or all of the following:

Common frequent flyer programs;
Sharing of airport lounges;
Code Sharing;
Coordinated scheduling;
Coordinated marketing;
Joint maintenance;
Coordinated pricing;
Cross-ownership

C. The Northwest Alliances

1. The alliances to which Northwest Airlines is a party are characterized by carrier relationships that are somewhat different and more highly integrated than the carrier relationships found in the other alliances.

2. **NWA-KLM "Joint Venture"**: includes the following aspects, among others

- a. operates under a grant of U.S. antitrust immunity
- b. the carriers agree upon an allocation of flying ("capacity" allocation)
- c. coordinated marketing activities: NWA responsible for N. America, KLM responsible for Europe
- d. coordinated pricing
- e. coordinated scheduling
- f. splitting of revenues -- important difference from usual codesharing arrangement
- g. extensive code sharing not only with each other but with other partner airlines
- h. subject of pending European Commission review

2. **NWA-CAL Alliance**

a. domestic and international codesharing as specifically permitted by collective bargaining agreement; detailed formulas on where and to what extent can codeshare

b. coordination of schedules

c. cross-voting and equity relationship:

-- NWA owns majority of voting stock of CAL and approximately 15% of the equity of CAL

-- NWA's CAL voting stock is subject to voting trust and other restrictions

d. constraints imposed by NWA-ALPA CBA on sale of assets between the carriers, extent of cross ownership, operations during strikes, and other aspects of the relationship

e. the Alliance is the subject of a DOJ lawsuit and of pending DOT review

D. Why Alliances?

1. Touted as "virtual mergers," but without the huge costs associated with merger or full acquisitions
2. Potential avoidance of messy labor issues, such as integration of seniority lists and collective bargaining agreements
3. Arguably subject to less governmental intrusion

II. Issues Presented by Alliances or Combinations of Carriers

A. **Scope Clause Issues**

1. General considerations

a. Most major carrier-pilot collective bargaining agreements contain scope clauses that restrict the type of alliances or combinations that the carrier can have with other carriers and place conditions on those activities that are permitted. Other scope clause restrictions are found in collective bargaining agreements with flight attendants and ground personnel.

b. The strengthen of scope clause protections has become a principal objective in negotiations.

c. Because of the presence in scope clauses of prohibitions or limitations on codesharing (particularly domestically), carriers have only be able to proceed with alliances (at least with those that include codesharing) where unions have been willing to grant waivers to the scope clause provisions.

-- NWA-CAL: waiver provided

-- UAL-DAL: waiver not provided

2. Specific issues of concern have included:

a. determining how flying will be allocated among alliance parties

b. determining how future growth or reduction in alliance flying will be allocated

c. restricting the ability of alliance partners to shift flying and work opportunities from higher cost to lower cost alliance partners

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d. restricting the ability of alliance partners to utilize their relationship to effectively undercut strikes or other employee activities

e. restricting the ability of alliance partners to shift assets (including aircraft) among from one carrier to the other

f. restricting the ability of a major carrier to shift flying to partner carriers who utilize smaller aircraft (including regional jets)

3. These scope clause issues have given rise or are likely to give rise to a number of significant legal issues, including the following:

a. can one carrier and the union for its employees can establish and enforce scope clause protections in their collective bargaining agreement that arguably impact flying or other employment opportunities available to another carrier and its employees?

b. whether attempts to enforce such scope protections in arbitration present representation disputes that are within the jurisdiction of the NMB?

c. whether a carrier can excuse compliance with scope clause requirements on the basis of alleged conflicting contractual obligations that it has outside the collective bargaining agreement or because of the existence of possibly conflicting scope clause requirements in the partner carrier's collective bargaining agreements?

d. with regard to alliances between U.S.-certificated carriers and non-U.S. certificated carriers, which nation's laws govern and which fora will decide disputes?

4. Cases of interest include the following:

AFA v. United Air Lines, 71 F.3d 915 (D.C. Cir. 1995) [aff'g District Ct. decision: 149 LRRM 2317 (D.D.C. 1994)]

ALPA v. UAL Corp., 874 F.2d 439 (7th Cir. 1989), 717 F.Supp. 575 (N.D. Ill. 1989), aff'd, 897 F.2d 1394 (7th Cir. 1990)

W.R. Grace & Co. v. Local Union 759, Int'l Union of Rubber Workers, 461 U.S. 757 (1983)

5. Recent collective bargaining experiences of interest

NWA-ALPA 1998 CBA

-- NWA pilots granted exception to scope clause to permit NWA-CAL Alliance, but the waiver is subject to many conditions and restrictions

-- extensive provisions detailing the extent to which NWA can participate in codesharing arrangements with other carriers, both internationally and domestically, and in international joint ventures

NWA-KLM experience: 1997 KLM dispute; 1998 NWA dispute

-- cross-support by NWA and KLM pilot groups in respective labor disputes to counter carrier efforts that could impact both pilot groups

B. Duty to Bargain Issues

Alliances present issues to be dealt with at the bargaining table that previously, in non-alliance settings, might have been considered "management decisions" over which there was no duty to bargain. Examples:

- allocation of assets
- decisions as to where to fly and where to base employees
- decisions regarding what and how many aircraft to purchase and where aircraft may be used
- corporate and governance issues