Managing the Inevitable:

What Every Pilot Needs to Know About Mergers

As the airline industry continues to consolidate, ALPA members need to learn what happens during mergers—and what their union can do to represent their interests and what ALPA policy precludes, to ensure fairness between two ALPA pilot groups.

By Jan W. Steenblik, Technical Editor

Mergers have been a fact of life in the airline industry for decades. Many, if not most, ALPA members will likely weather at least one airline merger during their careers. As ALPA goes to press, two mergers are under way between ALPA pilot groups—America West and US Airways are merging, as are Atlas Air and Polar Air Cargo. A number of airline industry analysts believe strongly that further consolidation is highly likely and perhaps even inevitable.

From the perspective of flightcrew members, every merger proceeds along three important and parallel tracks, which join together as the airlines actually combine: (1) merger of flightcrew seniority lists, (2) negotiation of a single collective bargaining agreement for the combined pilot group, and (3) operational merger, which can involve significant safety issues.

So what does every ALPA member need to know about airline mergers?

ALPA merger policy

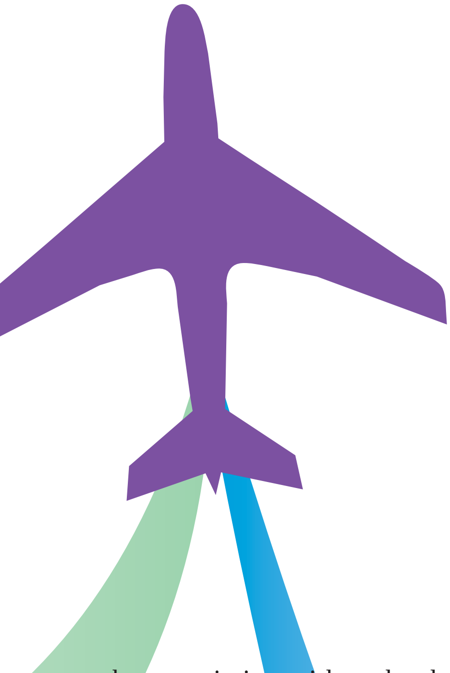
First and foremost, ALPA has developed over many decades a Merger and Fragmentation Policy that spells out the Association's role in seniority integration of ALPA-represented pilots. Successive generations of elected ALPA leaders have amended and updated the policy to reflect significant and fundamental changes in the airline industry. To view the policy, log on to Crewroom.alpa.org, click on "e-library" on the menu on the left-hand side of the Crewroom home page, click on "Administration," click on "Administrative Manual," and click on "Section 045—Merger and Fragmentation Policy."

The essence of the policy is summed up in its Preamble: "The role of ALPA in seniority integration is solely to provide the process by which the affected pilot groups on ALPA airlines arrive at the merged seniority list for presentation to management, through their respective merger representatives, using arbitration if necessary. Responsibility for the merged seniority list falls upon the respective merger representatives with ALPA National in a neutral position on the merits. It must be understood that what appears to be truly 'fair and equitable' often differs depending upon the eyes of the beholder and that there may be no consensus of what is 'fair and equitable.' This policy does not preclude two or more ALPA pilot groups from entering into discussions and/or reaching an agreement without invoking this process." [The policy is not likely to be invoked when ALPA does not represent one of the two merging pilot groups.]

The policy's statement of purpose begins: "The fundamental purpose of this policy is to provide protection for the employment rights and interests of ALPA flight deck crew members in an orderly, expeditious, and equitable manner."

Bob Savelson, a partner in Cohen, Weiss, and Simon, LLP, the New York law firm that has served as ALPA's general counsel since the 1940s, has advised ALPA's governing bodies since the late 1960s as the Association's leaders have revised and updated the ALPA Merger and Fragmentation Policy to adapt to changes in the airline industry.

"ALPA's leaders have long recognized that reaching a merged list can be so difficult that normal negotiating processes must be supplemented, and therefore, the leaders maintained internal dispute-resolution mechanisms," Savelson explains. "But this does not mean that every merged list must be arbitrated. The merger policy includes arbitration, if the pilot groups can't reach agreement, but in a good number of mergers, pilot groups have reached accommodation on seniority integration



by negotiating with each other or through mediation."

One of the unique aspects of ALPA merger policy is that it gives MEC merger committees *complete and full authority* to arrive at the merged list. An agreement on the merged list reached by the merger representatives is final and binding on both the MEC and the pilot group at large and is not subject to ratification.

Under the policy, the MEC selects two or three merger committee members. The general practice is that the MEC is kept informed on the committee's activities and provides guidance, though the committee retains its authority. The MEC can *recall* the merger committee before the merger of the MECs at the conclusion of the process.

Among the modifications to merger policy over the years have been changes to accommodate its Preamble and scope to the needs of the deregulation of the U.S. airline industry and to the present mediation-arbitration ("med-arb") process and to provide MECs with the option to make agreements by using expedited procedures. These changes recognize that ALPA represents pilot groups that vary enormously in size and the types of flying they perform. In making these changes, as in other areas, ALPA's leaders realized that "one size fits all" was not the "best practices" doctrine for seniority integration.

Other important past changes to the Merger and Fragmentation Policy have made the time lines for developing a merged seniority list more realistic and provide ALPA's President the authority to approve extensions to the time lines.

Those time lines all flow from the Policy Implementation Date (PID), which is set by the ALPA Executive Council (national officers and executive vice-presidents). Subordinate tasks have their own deadlines.

A merger committee's first task is to compile and verify employment data for each flightcrew member on the seniority list. The two merger committees then try to negotiate a merged list.

The ALPA Merger and Fragmentation Policy directs the merger representatives to "carefully weigh all the equities inherent in their merger situation. In joint session, the merger representatives should attempt to match equities to various methods of integration until a fair and equitable agreement is reached, keeping in mind the following goals, in no particular order:

"a. Preserve jobs.

"b. Avoid windfalls to either group at the expense of the other.

"c. Maintain or improve pre-merger pay and standard of living.

"d. Maintain or improve pre-merger pilot status.

"e. Minimize detrimental changes to career expectations."

Jonathan Cohen, director of ALPA's Legal Department, points out that the ALPA Merger and Fragmentation Policy, while stating the goals of policy, does not list the competing methodologies for merging seniority lists.

"Date of hire is a natural starting point," Cohen explains, "but other methodologies have been advocated and used. One, 'length of service,' differs from date of hire in that length of service does not give credit for time spent on furlough or other time away from active service. Another, the 'ratio' method, starts the list with a number of senior pilots from one airline and then inserts pilots from the other airline at fixed intervals on the list. Some mergers have combined one of these methods with additional complex 'conditions and restrictions,' which place limits on use of the combined list.

"There are very few absolutes in this area," Cohen cautions. "The same pilot group that advocated a 'stapler' merger [so called because one group's seniority list is merely "stapled" to the bottom of a larger group's list] one time may vigorously argue against it in a later merger."

In mergers in which legal counsel is retained to assist the merger representatives, the respective pilot groups hire the "merger lawyers" and pay them directly. These attorneys are paid from funds raised by an MEC assessment of all members of the pilot group. No ALPA staff, and that includes ALPA staff attorneys, may work on seniority integration.

If the two merger committees are unable to reach agreement on a merged list on their own, they may choose to enter a period of mediation, using a professional mediator/arbitrator agreed to by both merger committees or chosen through the alternate strike process. If mediation fails, the final step is arbitration, generally before a three-member board, consisting of the outside professional neutral and two ALPA members from other airlines—one chosen by each of the merging pilot groups. The Arbitration Board conducts hearings and then issues a final and binding award.

"ALPA merger policy is a success story—it provides a process where there otherwise wouldn't be one," Cohen says. "Given the history of consolidation in this industry, the fact that the Association has an accepted and working process speaks volumes about the ALPA Merger and Fragmentation Policy."

Unfortunately, some pilots believe that, during seniority integration as a result of a merger, ALPA's national leaders or other pilots can "put their thumb on the scale" and influence the outcome of the seniority integration process. Sometimes pilots have sued ALPA over the results of a merger.

"We've never lost a case arising out of a merger in which ALPA merger policy has been applied," Cohen points out, "because the courts have recognized that ALPA merger policy does, in fact, lay out this fair and impartial process."

Negotiating a single contract

Bruce York, director of ALPA's Representation Department, looks at the challenges—and the opportunities—of mergers from the labor relations and negotiating perspective. "Obviously, mergers present multiple opportunities for managers to make strategic decisions about the direction of the airline and to attract investment capital. At the same time, managers are challenged to make sense out of and successfully merge operations.

"From the broadest labor relations perspective, the need to successfully merge operations should compel managers to focus attention on the corporations' greatest assets, its employees, and to consider improvements that lead to more job satisfaction," York says. A recent draft discussion paper that the MIT Global Airline Industry Program circulated to the Airline Industry Council reports on research that observes a decline in employee "morale and in [employees'] trust and confidence that management has business models in place that will achieve a recovery." The same draft report highlights research that correlates both a "positive workplace culture" and "labor/management negotiations that were completed in a timely fashion" with "productivity and the quality of customer service."

Mergers can also provide more tangible challenges and opportunities in the negotiating process. The bargaining parties have a chance to implement quality-of-life improvements like the ones that the MIT group considered, and also to look at improvements in pay, work rules, and benefits that may be appropriate in the context of a merged operation, earlier than anticipated when the contract was signed. A current example is the negotiation of a single contract by the America West and US Airways pilot groups. Although America West pilots had the right to reopen their contract this year, US Airways pilots were a few years away from reopening their contract, signed during bankruptcy.

"Getting to talk again about pay, work rules, and benefits sooner than we expected is a real positive. Of course, the bargaining process is always a challenge, and negotiating a combined contract from two pilot agreements that were developed around different operations is even more difficult," York offers.

Even before negotiating a new merged contract, employee groups have to get through an interim or transition period during which the company is typically running side-by-side operations. To help navigate this period, ALPA staff and counsel helped the America West and US Airways pilot groups negotiate a "Transition Agreement," which the two pilot groups and management signed earlier this year. It created and described a structure for interim operations and negotiations that seeks to provide for efficient negotiation of the single agreement and minimize the confusion and problems that can occur during this period.

The Transition Agreement set dates by which operations must be merged to prevent managements from whipsawing one pilot group against the other; established minimum levels of flying for each of the pre-merger airlines during the interim period; required America West to hire furloughed US Airways pilots before hiring other pilots; obligated management to accept ALPA's integrated seniority list; set out the process and dates for negotiation and, if necessary, mediation of the new merged contract; agreed on rates for new EMB-190 flying; and provided dispute-resolution mechanisms.

York believes "all of these features help provide certainty, lessen employee concerns, and help both management and employees navigate the interim period successfully."

Operations

While the parallel processes of seniority integration and negotiating a single collective bargaining agreement are under way, the merging airlines—and the FAA or Transport Canada—are faced with the daunting challenge of melding their operations into one.

As any pilot who has been through an airline merger can attest, the operational merger touches virtually every aspect of life on the line, and differences in many operational areas need to be closely examined and reconciled:

• The merging flight operations departments must compare their procedures, operations specifications, minimum equipment lists, and checklists to develop what pilots will use after the merger is complete.

• Training may be substantially different at the two pre-merger airlines—especially if one airline follows traditional Appendix H guidelines and the other uses AQP.

• Aircraft themselves often must be modified to meet a common standard of equipage (TWA's fleet of airplanes with switch positions reversed from the industry standard is a classic example).

• Ground, fueling, and ramp procedures must be standardized.

• Dispatch and meteorology departments may operate very differently at the two pre-merger airlines.

• The pre-merger airlines may or may not have FOQA

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and ASAP programs; even if each airline has one or both programs in place before the merger, they may differ significantly in important ways.

• Maintenance, like flight operations, needs to be integrated.

The importance of integrating the merging airlines’ operations properly—not only getting it right, but doing so in a timely fashion—is borne out by the accident and incident record.

Just one example: After investigating the August 1988 takeoff crash of a B-727 at Dallas-Ft. Worth International Airport, the National Transportation Safety Board said, in its official report, “Contributing to the accident was [the airline’s] slow implementation of necessary modifications to its operating procedures, manuals, checklists, training, and crew checking programs which were necessitated by significant changes in the airline [after] rapid growth and merger.”

In 1991, Asef Degani and Dr. Earl Wiener, researchers noted for their work on human factors in aviation, published a landmark NASA paper on human performance and checklist design. They devoted a section of that paper to the effects of airline mergers and acquisitions on pilot checklist performance.

Degani and Wiener noted, “After a merger or a takeover, an adjustment period takes place. During this period, the acquiring company inspects the operational procedures of the acquired company, and initiates a program to standardize the procedures and checklists of the acquired airline. The new standardized procedures are, of course, based on the philosophy of the acquiring company, which is sometimes very different from the philosophy of the acquired company. The acquiring company can be expected to assume that its philosophy is correct and that little can be learned from the acquired company.”

To illustrate the potential effect of such changes on line operations, the authors included an ASRS report from an airline captain who had been saved by his airplane’s takeoff warning system when he began a takeoff without flaps or slats extended (which, according to the NTSB, was the proximate cause of the August 1988 B-727 takeoff crash at DFW). The ASRS report detailed how changes in procedures and checklists mandated by the acquiring airline led to the flight crew’s failure to complete the before-takeoff checklist or note the discrepancy.

Again, challenges and opportunities: A merger forces the respective airline managements—and the regulatory authority—to look closely at nearly every aspect of how each airline operates. The merger thus gives the new airline both the opportunity and the responsibility to not merely impose the acquiring airline’s ways of doing business on the acquired airline, but to take a broader look throughout the airline industry and find “best practices” that can be copied over onto a fresh sheet of paper.

And while the airlines are merging, under the guidance of the regulatory authority (the FAA or Transport Canada), the agency itself is working through similar “merger” issues, such as which FAA region will be given responsibility of overseeing the “merged” certificate.

“The ultimate problem,” says Keith Hagy, director of ALPA’s Engineering and Air Safety Department, “is that the two airlines often have very different cultures, including safety and operations cultures. What programs and processes from the individual airlines does the regulatory agency view as absolutely necessary at the final ‘merged’ airline?”

And what’s ALPA’s role in the operational merger?

During a merger, the Central Air Safety Committee of each of the merging pilot groups is expected to keep a close eye on the operational integration. Supporting them is the broad and deep array of ALPA resources provided by the Association’s Air Safety Structure, backed up by the ALPA Engineering and Air Safety Department.

These resources include, but are by no means limited to, the ALPA Operations Committee, made up of the central air safety chairmen of every ALPA pilot group; the ALPA Professional Standards Committee; the ALPA Aeromedical Office; the ALPA Training Council; the ALPA HIMS (substance abuse) program; the ALPA FOQA / ASAP Project Team; the ALPA Training Council; the ALPA National Security Committee; and the ALPA-wide technical groups, especially Aircraft Design and Operations, plus Human Factors and Training.

Perhaps the best words to close this primer on airline mergers are a few from a pilot who’s been through a couple of mergers himself:

Capt. Chris Beebe, ALPA’s vice-president—finance / treasurer, wrote recently to a fellow US Airways pilot, “I personally feel that [further airline] industry consolidation is right around the corner. If you think that this is remotely true, it would seem that we are better off as a part of a large community of pilots that has policies for such things, as ALPA does. I know it’s not perfect, but it truly is ours. You and I each have the ability to change things, either through a vote, or by being a bigger part of the process by stepping up and getting involved. In the meantime, call your reps to find out where they stand….”