

App. 1

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 20-1106

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LINDA RIZZO-RUPON; SUSAN MARSHALL;  
NOEMIEO OLIVEIRA,  
Appellants

*v.*

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
AFL-CIO DISTRICT 141, LOCAL 914;  
INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS  
DISTRICT LODGE 141; INTERNATIONAL  
ASSOCIATION OF MACHINISTS  
AEROSPACE WORKERS AFL-CIO

On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. No. 2-19-cv-00221)  
Honorable William J. Martini, U.S. District Judge

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Submitted Under Third Circuit L.A.R. 34.1(a)  
on September 18, 2020

Before: KRAUSE, RESTREPO,  
and BIBAS, *Circuit Judges*

(Opinion filed: September 23, 2020)

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OPINION\*

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KRAUSE, *Circuit Judge*.

Under the Railway Labor Act’s agency-fee provision, private-sector employers and unions may enter agreements requiring non-union employees to finance union activities. *See* 45 U.S.C. § 152, Eleventh(b). In keeping with that provision, United Airlines authorizes Appellees International Association of Machinists & Aerospace Workers, AFL-CIO, IAM District Lodge 141, and IAM Local 914 to collect fees from United’s non-union employees. Appellants, who pay fees under that agreement, argue that the Act amounts to a facial violation of the First Amendment. Because the District Court correctly recognized that controlling precedent precludes Appellants’ claim, we will affirm.

**A. Discussion<sup>1</sup>**

We begin with a premise that Appellants do not dispute: If *Railway Employees’ Department v. Hanson*, 351 U.S. 225 (1956), remains good law, it bars

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

<sup>1</sup> The District Court had jurisdiction under 28 U.S.C. § 1331, and we have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court’s dismissal under Rule 12(b)(6) for failure to state a claim. *See Mid-Am. Salt, LLC v. Morris Cty. Coop. Pricing Council*, 964 F.3d 218, 226 (3d Cir. 2020).

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Appellants' First Amendment challenge. In *Hanson*, the Supreme Court held that the Railway Labor Act's "requirement for financial support of the collective-bargaining agency by all who receive the benefits of its work . . . does not violate [ ] the First [Amendment]." *Id.* at 238. And as the Court has since clarified, while *Hanson* did not preclude as-applied challenges to the Act, see *Ellis v. Brotherhood of Ry., Airline & S.S. Clerks, Freight Handlers, Express & Station Emps.*, 466 U.S. 435, 456 (1984); *Intl Ass'n of Machinists v. Street*, 367 U.S. 740, 748-49 (1961), it did foreclose claims, like Appellants', that attack only "the constitutional validity of [the Act] on its face," *Street*, 367 U.S. at 748 (citing *Hanson*, 351 U.S. at 238); see *Bolden v. Se. Pa. Transp. Auth.*, 953 F.2d 807, 827 (3d Cir. 1991) (en banc).

Recognizing as much, Appellants contend instead, based on a trio of recent Supreme Court opinions, that *Hanson* has been overruled. A review of those cases, however, makes apparent that it has not—at least not yet.

Appellants rely primarily on *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), where the Supreme Court invalidated longstanding precedent permitting public-sector unions to force non-members to pay agency fees. *Id.* at 2478 (overruling *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977)). But *Janus* took pains to distinguish *Hanson*, emphasizing that the "private-sector union shops" analyzed in *Hanson* presented "a very different First Amendment question" than the

public-sector unions at issue in *Janus. Id.* at 2479 (emphasis retained).

Nor does *Knox v. Service Employees International Union, Local 1000*, 567 U.S. 298 (2012), support Appellants' position. In that case, the Court considered "whether the First Amendment allows a *public-sector* union to require objecting nonmembers to pay a special fee for the purpose of financing the union's political and ideological activities." *Id.* at 302 (emphasis added). Consistent with its focus on public-sector unions, *Knox* never even cited *Hanson*, let alone overruled it.

That leaves *Harris v. Quinn*, 573 U.S. 616 (2014), the third and final case Appellants read as invalidating *Hanson*. But *Harris* says nothing of the kind. Like its predecessors, *Harris* reaffirmed *Hanson's* determination that the Act "was constitutional *in its bare authorization* of union-shop contracts requiring workers to give financial support to unions." *Id.* at 636 (internal quotation marks and citation omitted). In other words, the Court understood *Hanson* as holding that the Act does not violate the First Amendment on its face, but may be susceptible to as-applied challenges.

As a fallback position, Appellants maintain that even if *Janus*, *Knox*, and *Harris* do not explicitly overrule *Hanson*, they undermine its reasoning. Whatever the merits of this argument, however, the Supreme Court alone retains "the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am.*

*Express Inc.*, 490 U.S. 477, 484 (1989). Unless and until that happens, *Hanson* remains binding precedent.<sup>2</sup>

## **B. Conclusion**

For the foregoing reasons, we will affirm the District Court's order of dismissal.

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<sup>2</sup> The District Court dismissed the complaint on two alternative grounds: first, that Appellees are not state actors, and second, that *Hanson* forecloses facial First Amendment challenges to the Act. Having determined that *Hanson* resolves this appeal, we see no need to reach the state actor issue. In addition, because Plaintiffs have not contested the dismissal of their Fifth Amendment claim, we deem that claim abandoned and need not discuss it here. See *Free Speech Coal., Inc. v. Ate y Gen.*, 677 F.3d 519, 545 (3d Cir. 2012).

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**UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY**

**LINDA RIZZO-RUPON,  
*et al.*,**

**Plaintiffs,**

**v.**

**INTERNATIONAL  
ASSOCIATION OF  
MACHINISTS AND  
AEROSPACE WORKERS,  
AFL-CIO, *et al.*,**

**Defendants.**

Civ. No.: 2:19-cv-00221

**OPINION**

(Filed Dec. 16, 2019)

**WILLIAM J. MARTINI, U.S.D.J.:**

In this action, Plaintiffs ask the Court to hold that Section 2 Eleventh of the Railway Labor Act (“RLA”), 45 U.S.C. § 152 Eleventh, which preempts state law prohibiting covered unions from entering into agreements providing for agency fees, is unconstitutional under the First and Fifth Amendments. For the reasons set forth below, the Court declines to do so. Consequently, Plaintiffs fail to state a claim upon which relief can be granted. Defendants’ Motion to Dismiss, ECF No. 9, is **GRANTED**.

## **I. BACKGROUND AND PROCEDURAL HISTORY**

Plaintiffs Linda Rizzo-Rupon, Susan Marshall, and Noemio Oliveira work as passenger service employees for United Airlines at Newark Liberty International Airport. Compl., ECF. No. 1 ¶¶ 1, 8-10. Defendants are the International Association of Machinists and Aerospace Workers, AFL CIO, IAM District Lodge 141, and IAM Local Lodge 914 (“the Union Defendants”). *Id.* at ¶¶ 11-13. Although not members of the Union Defendants, Plaintiffs are covered by the collective bargaining agreement between United Airlines and IAM Local Lodge 914 entitled Passenger Service Employees 2016-2021 (“the Agreement”). *Id.* at ¶¶ 8-10, 20, Compl. Exs. 2, 3, 5. The collective bargaining relationship between United and the Union Defendant is governed by the Railway Labor Act, 45 U.S.C. § 151, *et. Seq.* Compl. ¶ 11.

Pursuant to Article 8(B)(1) of the Agreement, employees are not required to become members of the Union, but they are required to pay “service fees,” also know as agency fees, to the Union equal to monthly membership dues. *See* Compl. Exs. 3, 5. Additionally, nonmember agency fee payers may become “dues objectors” and pay a reduced fee rate for expenses only directly related to collective bargaining matters. Compl. Ex. 5, pp. 3, 5. The parties agree that New Jersey has not enacted a “right-to-work” law—that is, a prohibition on unions from negotiating contracts with employers that require all members who benefit from

the union contract to contribute to the costs of union representation. *See* Def.'s Mot. 7; Pls' Resp. 2.

Plaintiffs filed suit on January 8, 2019. ECF No. 1. Defendants filed their Motion to Dismiss on June 3, 2019. ECF No. 9. Plaintiffs' response deadline was delayed to allow the United States Attorney General to intervene if he chose to do so. ECF No. 16. The Attorney General did not do so. ECF No. 17. Plaintiffs filed their opposition on September 24, 2019. ECF No. 26. Defendants filed their reply on October 8, 2019. ECF No. 28.

## **II. STANDARD OF REVIEW**

Federal Rule of Civil Procedure 12(b)(6) provides for the dismissal of a complaint, in whole or in part, if the plaintiff fails to state a claim upon which relief can be granted. The moving party bears the burden of showing that no claim has been stated. *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005). In deciding a motion to dismiss under Rule 12(b)(6), a court must take all allegations in the complaint as true and view them in the light most favorable to the plaintiff. *See Warth v. Seldin*, 422 U.S. 490, 501 (1975). "A Rule 12(b)(6) dismissal is appropriate if, as a matter of law, it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989).



### III. DISCUSSION

Defendants move to dismiss under Rule 12(b)(6) for failure to state a claim. Plaintiffs bring a First Amendment free speech challenge to the agency-fee provisions of the Railway Labor Act, 45 U.S.C. § 152 Eleventh, and argue that the Supreme Court’s decision in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018) requires that this Court find agency fees are unconstitutional as to employs covered by the Railway Labor Act. Plaintiffs ask for an injunction restraining the Union Defendants from forcing Plaintiffs to financially support the Union Defendants as a condition of employment and to award damages. Compl. 8-9. Defendants argue, in essence, that (1) Plaintiffs’ First Amendment claims must fail because Defendants are not state actors and (2) even if Defendants were state actors, the Supreme Court’s decision in *Railway Employees’ Dept. v. Hanson*, 351 U.S. 225 (1956), upholding Section 2 Eleventh against an identical constitutional challenge, is binding on this Court. The Court addresses each argument.

#### A. State Action Doctrine

The first issue is whether the Union Defendants, by entering into the Agreement providing for agency fees under Section 2 Eleventh of the RLA, have engaged in state action sufficient to raise a free speech claim. The First Amendment provides, in relevant part, that “Congress shall make no law . . . abridging freedom of speech.” U.S. Const. amend. I. The Free Speech Clause prohibits only governmental abridgement of

speech, not private abridgment of speech. See *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019) (“By enforcing [the] constitutional boundary between the governmental and the private, the state-action doctrine protects a robust sphere of individual liberty.”). “[A] private entity can qualify as a state actor in a few limited circumstances—including, for example, (i) when the private entity performs a traditional, exclusive public function . . . (ii) when the government compels the private entity to take a particular action . . . or (iii) when the government acts jointly with the private entity.” *Id.* (internal citations omitted).

Plaintiffs do not contend that the Union Defendants fall into any of these categories. Rather, they argue that the Supreme Court’s conclusion in *Hanson* that state action was present sufficient to reach the merits of employee-plaintiffs’ free speech challenge to Section 2 Eleventh of the RLA, also follows from the facts of this case. The Supreme Court in *Hanson* found that state action was present because, although Section 2 Eleventh did not require private sector unions and employers to enter agreements providing for agency fees, it preempted Nebraska’s right-to-work law. See 351 U.S. at 231-32. The *Hanson* Court explained that “[i]f private rights are being invaded, it is by force of an agreement made pursuant to federal law which expressly declares that state law is superseded.” *Id.* at 233. This was sufficient for state action.

The parties agree that New Jersey has no right-to-work law. Consequently, because no New Jersey law is

preempted by Section 2 Eleventh of the RLA, Plaintiffs possess no private rights implicated by the RLA. *Id.* at 232. The Third Circuit in *White v. Communication Workers of America* recognized that preemption of a contrary state law by federal law was central to the *Hanson* Court’s finding of state action in the RLA context. 370 F.3d 346, 353 (2004). The Supreme Court’s decision in *Janus* concerned only public sector unions and did not alter this logic. 138 S. Ct. 2448, 2479 (noting that “*Abood* [*v. Detroit Board of Education*, 431 U.S. 209 (1977)] failed to appreciate that a very different First Amendment question arises when a State *requires its* employees to pay agency fees.”). Plaintiffs appear to argue that state action arises because the RLA preempts other states’ right-to-work laws. Pls’ Resp. 14. This argument is without merit. Plaintiffs in this matter, unlike in *Hanson*, do not argue that they possess a right-to-work consistent with any states’ law, let alone the one wherein they are employed.

The agency fee provision at issue in this case is solely the result of a negotiated agreement between private parties—the Union Defendants and United Airlines. Section 2 Eleventh of the RLA permits, but does not compel, private parties to engage in negotiation for contracts that include an agency fee provision. New Jersey does not prohibit such negotiations. There is no state action upon which to premise a First Amendment free speech claim.

B. ***Railway Employees' Department v. Hanson* is Binding on This Court**

The Supreme Court in *Hanson* upheld the constitutionality of Section 2 Eleventh of the RLA, stating explicitly “that the requirement for financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments.” 351 U.S. at 238. Plaintiffs claim that the Supreme Court’s decision in *Janus* overruled the Court’s holding in *Hanson* and requires a finding that “agency fees are unconstitutional in the Railway Labor Act context.” Compl. ¶ 32.

*Janus* did not overrule *Hanson*. *Janus* applies to public sector employees, not private sector employees. See *Janus*, 138 S. Ct. at 2476, 2473 (public-sector fees involve “the government . . . compel[ling] a person to pay for another party’s speech,” on matters involving “the budget of the government” and “the performance of government services”). The Court in *Janus* specifically differentiated between *Hanson*, which “involved Congress’s ‘bare authorization’ of private-sector union shops under the Railway Labor Act,” and *Abood*, “which failed to appreciate that a very different First Amendment question arises when a State requires its employees to pay agency fees.” *Id.* at 2479. With respect to a non-consenting employee, the Court held, “this arrangement [in the public sector] violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.” *Id.* at 2460. In short, *Janus* stands for

the limited proposition that when a government entity and labor organization agree to require government employees to pay agency fees, the First Amendment is implicated in ways dramatically distinct from when agency fees are agreed to in the private sector. Because Plaintiffs here all work for a private company—United Airlines—*Janus* has no application.

Even if it could be argued that the legal reasoning behind binding precedent has been called into doubt by another line of cases, dismissal is still required. *See Rodriguez de Quijas v. Shearson/American Express Inc.*, 490 U.S. 477, 484 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”). The parties agree that “it may be . . . that the Supreme Court will eventually overturn its prior holding . . . but the Supreme Court is the only body that can make that determination.” Pls.’ Resp. 15; Defs.’ Reply 10. Because this Court is bound by the Supreme Court’s decision in *Hanson* and its recent decision in *Janus* did not overrule *Hanson*, this Court declines to hold that Section 2 Eleventh of the Railway Labor Act (“RLA”), 45 U.S.C. § 152 Eleventh, is unconstitutional under the First and Fifth Amendments.<sup>1</sup>

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<sup>1</sup> Plaintiffs’ failure to mention their Fifth Amendment claim in their Response to Defendants’ Motion to Dismiss constitutes abandonment and provides an alternative ground for dismissal of that claim. *See Reynolds v. Wagner*, 128 F.3d 166, 178 (3d Cir.

#### IV. CONCLUSION

Because Plaintiffs' First Amendment claims fail as a matter of law, they fail to state a claim upon which relief can be granted under Rule 12(b)(6). Defendants' Motion to Dismiss is **GRANTED**. Plaintiffs' Cross-Motion for Declaratory Judgment, ECF No. 26, is **DE-NIED**. Plaintiffs' Complaint is **DISMISSED WITH PREJUDICE**.

**Dated: December 16, 2019**

*/s/ William J. Martini*  

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**WILLIAM J. MARTINI, U.S.D.J.**

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1997) (holding that a single conclusory statement in a brief without more results in waiver of the argument); *see also Batchelor v. Procter & Gamble Co.*, No. 14-2424, 2014 WL 6065823, at \*6 (D.N.J. Nov. 13, 2014) (Court dismissed an ambiguous claim for breach on express warranty where plaintiff failed to address the "ambiguity in their Opposition Brief, despite Defendant's contention in support of the motion").

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App. 15

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 20-1106

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LINDA RIZZO-RUPON;  
SUSAN MARSHALL; NOEMIEO OLIVEIRA,  
Appellants

v.

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
AFL-CIO DISTRICT 141, LOCAL 914;  
INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS  
DISTRICT LODGE 141; INTERNATIONAL  
ASSOCIATION OF MACHINISTS  
AEROSPACE WORKERS AFL-CIO

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. No. 2-19-cv-00221)  
District Judge: Hon. William J. Martini

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SUR PETITION FOR REHEARING

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(Filed Oct. 30, 2020)

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Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, *Circuit Judges*

The petition for rehearing filed by Appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Cheryl Ann Krause  
Circuit Judge

Dated: October 30, 2020  
Tmm/cc: Matthew C. Moench, Esq.  
Patrick J. Wright, Esq.  
John J. Grunert, Jr., Esq.  
Elizabeth A. Roma, Esq.

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U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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**45 U.S.C. § 152**

**First. Duty of carriers and employees to settle disputes**

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

**Second. Consideration of disputes by representatives**

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so

to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

**Third. Designation of representatives**

Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

**Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden**

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor

organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

**Fifth. Agreements to join or not to join labor organizations forbidden**

No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

**Sixth. Conference of representatives; time; place; private agreements**

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

**Seventh. Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden**

No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

**Eighth. Notices of manner of settlement of disputes; posting**

Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

**Ninth. Disputes as to identity of representatives; designation by Mediation Board; secret elections**

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes

of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. In any such election for which there are 3 or more options (including the option of not being represented by any labor organization) on the ballot and no such option receives a majority of the valid votes cast, the Mediation Board shall arrange for a second election between the options receiving the largest and the second largest number of votes. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

**Tenth. Violations; prosecution and penalties**

The willful failure or refusal of any carrier, its officers or agents, to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the

carrier, officer, or agent offending shall be subject to a fine of not less than \$1,000, nor more than \$20,000, or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

**Eleventh. Union security agreements; check-off**

Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization

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or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted –

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which



shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First division of paragraph (h) of section 153 of this title defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in

which he is employed on the effective date of the first agreement applicable to him:

Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended.

**Twelfth. Showing of interest for representation elections**

The Mediation Board, upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, shall not direct an election or use any other method to determine who shall be the representative of such craft or class unless the Mediation Board determines that the application is supported by a showing of interest from not less than 50 percent of the employees in the craft or class.

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**LINDA RIZZO-RUPON,  
SUSAN MARSHALL,  
NOEMIO OLIVEIRA,**

Plaintiffs,

vs.

**INTERNATIONAL ASSOCIA-  
TION OF MACHINISTS AND  
AEROSPACE WORKERS, AFL-  
CIO DISTRICT 141 LOCAL 914,  
INTERNATIONAL ASSOCIA-  
TION OF MACHINISTS AND  
AEROSPACE WORKERS,  
DISTRICT LODGE 141,  
INTERNATIONAL ASSOCIA-  
TION OF MACHINISTS AND  
AEROSPACE WORKERS,  
AFL-CIO,**

Defendants.

**Case No.:**

**COMPLAINT**

(Filed Jan. 8, 2019)

Plaintiffs, Linda Rizzo-Rupon, residing at 126 Main Street, Whitehouse Station, New Jersey 08889, Susan Marshall, residing at 156 Plainfield Road, Metuchen, New Jersey 08840, and Noemio Oliveira, residing at 2275 Biddle Lane Easton, Pennsylvania 18040 (collectively, “Plaintiffs”), by and through undersigned counsel, by way of Complaint against defendants International Association of Machinists and Aerospace Workers, AFL-CIO (“JAM”), with offices at 9000 Machinists Place, Upper Marlboro, Maryland 20772-2687, International Association of Machinists and Aerospace Workers, District Lodge 141 (“JAM District Lodge 141”), with offices at 1771 Commerce Drive, Suite 103, Elk Grove Village, Illinois 60007-2139, and International Association of Machinists and Aerospace Workers District Lodge 141, Local Lodge 914 (“IAM Local Lodge 914”), with offices at 160 Spring Street, Elizabeth, New Jersey, 07201 (collectively, the “Union Defendants”), allege as follows:

**BACKGROUND AND NATURE OF THE ACTION**

1. Plaintiffs are employees of United Airlines and work out of the Newark, New Jersey airport.

2. In Janus v. AFSCME Council 31, 585 U.S. \_\_\_\_ (2018), the Supreme Court held:

States and public-sector unions may no longer extract agency fees from nonconsenting employees. Under Illinois law, if a public-sector collective-bargaining agreement includes an agency-fee provision and the union certifies to

the employer the amount of the fee, that amount is automatically deducted from the nonmember's wages. §315/6(e). No form of employee consent is required. This procedure violates the First Amendment and cannot continue. Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed.

Janus, slip opinion at 48.

3. In Janus, the Supreme Court discussed two of its Railway Labor Act ("RLA") cases wherein agency fees had been permitted:

Railway Employes v. Hanson, 351 U.S. 225 (1956), and Machinists v. Street, 367 U.S. 740 (1961), "appear[ed] to require validation of the agency shop agreement before [the Court]." 431 U.S., at 226. Properly understood, those decisions did no such thing. Both cases involved Congress's "*bare authorization*" of private-sector union shops under the Railway Labor Act. Street, *supra*, at 749 (emphasis added).<sup>24</sup>

<sup>24</sup> No First Amendment issue could have properly arisen in those cases unless Congress's enactment of a provision allowing, but not requiring, private parties to enter into union-shop arrangements was sufficient to

establish governmental action. That proposition was debatable when Abood was decided, and is even more questionable today. See American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 53 (1999); Jackson v. Metropolitan Edison Co., 419 U.S. 345, 357 (1974). Compare, e.g., White v. Communications Workers of Am., AFL-CIO, Local 13000, 370 F.3d 346, 350 (CA3 2004) (no state action), and Kolinske v. Lubbers, 712 F.2d 471, 477-478 (CA DC 1983) (same), with Beck v. Communications Workers of Am., 776 F.2d 1187, 1207 (CA4 1985) (state action), and Linscott v. Millers Falls Co., 440 F.2d 14, 16, and n. 2 (CA1 1971) (same). We reserved decision on this question in Communications Workers v. Beck, 487 U.S. 735, 761 (1988), and do not resolve it here.

Janus, slip opinion at 35 and n. 24.

4. Agency fees are authorized under 45 U.S.C. § 152 Eleventh Plaintiffs' claims arise under the First and Fifth Amendments to the United States Constitution. They seek to have agency fees declared unconstitutional in the RLA context.

### **JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction under 28 U.S.C. § 1331, and 28 U.S.C. § 1343.

6. Venue is appropriate in this jurisdiction because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. 28 U.S.C. § 1391(b)(2).

7. Newark would appear to be the most appropriate Vicinage because the events arose out of Plaintiffs' employment, which occurred in Newark, New Jersey. See generally, Local Civil Rule 40.1(a).

### **PARTIES**

8. Plaintiff Linda Rizzo-Rupon is an "employee" under 45 U.S.C. § 151 Fifth and 45 U.S.C. § 181. She works at Newark International Airport as a customer service representative. She is covered by a collective bargaining agreement between United Airlines (not a party) and Defendant JAM, District Lodge 141; but, she is not a member of the Union Defendants. She has not signed a dues authorization card.

9. Plaintiff Susan Marshall is an "employee" under 45 U.S.C. § 151 Fifth and 45 U.S.C. § 181. She works at Newark International Airport as a customer service representative. She is covered by a collective bargaining agreement between United Airlines (not a party) and Defendant JAM, District Lodge 141; but, she is not a member of the Union Defendants. She has not signed a dues authorization card.

10. Plaintiff Noemio Oliveira is an "employee" under 45 U.S.C. § 151 Fifth and 45 U.S.C. § 181. He works at Newark International Airport as a customer service representative. He is covered by a collective bargaining agreement between United Airlines (not a party) and Defendant JAM, District Lodge 141; but, he is not a member of the Union Defendants. He has not signed a dues authorization card.

11. Defendant IAM is a “representative” under 45 U.S.C. § 151 Sixth and 45 U.S.C. § 181. Upon information and belief, its main office is located at 9000 Machinists Place, Upper Marlboro, Maryland 20772-2687.

12. Upon information and belief, Defendant IAM District Lodge 141 is a “representative” under 45 U.S.C. § 151 Sixth and 45 U.S.C. § 181. Upon further information and belief, its main office is located at 1771 Commerce Drive, Suite 103, Elk Grove Village, Illinois 60007-2139.

13. Upon information and belief, Defendant IAM Local Lodge 914 is a “representative” under 45 U.S.C. § 151 Sixth and 45 U.S.C. 181. Upon further information and belief, its main office is 160 Spring Street, Elizabeth, New Jersey, 07201.

### **FACTS**

14. United Airlines and Continental Airlines Merger Agreement became effective on October 1, 2010.

15. United Airlines and Continental Airlines were issued a single operating certificate by the Federal Aviation Administration on November 30, 2011.

16. Pre-merger, the United Passenger Service Employees were represented by Defendant IAM and Defendant IAM District Lodge 141.

17. Pre-merger, the Continental Passenger Service Employees were not represented by a union.



18. Post-merger, the National Mediation Board conducted a “single-carrier proceeding,” wherein the Board works out union representation issues where there are mergers. See generally, National Mediation Board Manual § 19.5 (June 12, 2018), a selection of which is attached hereto as **Exhibit 1**.

19. The single-carrier proceeding led to an election whereby the employees could choose between Defendant IAM or no union. Defendant IAM prevailed. United Airlines, 39 NMB 294 (March 8, 2012) (NMB Case No. R-7313), attached hereto as **Exhibit 2**.

20. Currently, all Plaintiffs are in a bargaining unit covered by a collective bargaining agreement titled “Passenger Service Employees 2016-2021 Agreement.” (“PSE Agreement”). A copy of the relevant portions is attached hereto as **Exhibit 3**.

21. As authorized by 45 U.S.C. § 152 Eleventh, Article 8, Part B. 1. of the PSE Agreement requires nonmembers of Union Defendants to pay an agency fee:

As a condition of employment, all employees of the Company covered by this Agreement will, on the effective Date of this Agreement, become and remain members in good standing of the Union or, in the alternative, render the Union a monthly sum equivalent to the standard monthly dues required of the Union members (“Service Fees.”) Employees covered by this Agreement and hired on or after the Agreement’s effective date will comply with

these requirements on or before the 60th day following their initial seniority date.

*Id.*

22. Article 8, Part B. 8. of the PSE Agreement discusses delinquency of service fees:

If an employee covered by this Agreement becomes delinquent in the payment of monthly dues or Service Fees, the Union will take steps necessary in accordance with its established procedures to notify the employee in writing that he is delinquent in the payment of monthly membership dues or Service Fees as specified herein and accordingly will be subject to discharge as an employee of the Company. If such employee still remains delinquent in the payment of dues or service fees after the Union has completed all steps in its established procedure, the Union will certify in writing to the Company that the employee has failed to remit payment of dues or Service Fees within the grace period allowed under the Union's procedure and is, therefore, to be discharged. The Company will then promptly notify the employee involved that he is to be discharged from the services of the Company and will promptly take proper steps to so discharge the employee.

*Id.*

23. Upon information and belief, agency fees are generally collected by Defendant TAM Local Lodge 914 and remitted to Defendant TAM District Lodge 141.

See, International Association of Machinists and Aerospace Workers Constitution (January 1, 2017) at Article XXII § 4 pp. 83-84, attached hereto as **Exhibit 4**.

24. Upon information and belief, Defendant JAM District Lodge 141 pays a per capita tax to Defendant JAM on behalf of itself and Defendant IAM Local Lodge 914. See, International Association of Machinists and Aerospace Workers Constitution (January 1, 2017) at Article VII § 4 pp. 41-43. *Id.*

25. Each Plaintiff received a September 8, 2017 letter from Alexander Gerulis, Secretary Treasurer of Defendant TAM District Lodge 141 (attached hereto as **Exhibit 5**). Plaintiffs were offered an opportunity to join the union. The letters also noted certain fee-payer requirements and a potential penalty for failing to keep up with payments:

According to IAM's records, you are recognized as a fee objector. Therefore, your fee will be reduced per the letter you received. The reduced initiation fee is \$77.87 and the reduced non-member fee is \$43.26/month. You should have already received notice of the obligation to pay initiation and monthly dues or fees when you joined the bargaining unit, but whether or not you did, you now have thirty (30) days from the date of this letter to make your initial payments of the initiation/reinstatement fee and the first month's dues. If you fall two months in arrears in making the required payments you will be terminated from employment under the terms of the collective bargaining agreement.

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After making these payments, you must continue to be in compliance with your financial obligations by making monthly payments to the union. The easiest way to meet your obligation going forward is to sign the attached check-off authorization, so that your monthly fees are automatically deducted from your paycheck. If you do not authorize check-off, you are responsible to make monthly payments by check to the union. Even if you agree to check-off, you still should send your first payment for initiation/reinstatement fee and one month's dues or fees to this office by check.

Please fill out and return the application with your payment of \$1221.13 to I.A.M.A.W District Lodge 141 at the address indicated on the letterhead. If you have any questions about these materials or have some explanation for nonpayment, please do not hesitate to contact us.

### Exhibit 5.<sup>1</sup>

26. Perhaps contrary to the Union Defendants' preferred procedure, Plaintiff Rizzo-Rupon has been sending her agency-fee checks to Defendant JAM District Lodge 141 as opposed to Defendant IAM Local Lodge 914. For reasons that are not entirely clear, Plaintiff Rizzo-Rupon's March 2018 and April 2018 checks were returned to her by Defendant JAM District Lodge 141 and requested to be sent to Defendant JAM Local Lodge 914 despite the January 2018,

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<sup>1</sup> The handwritten material on Plaintiff Rizzo-Rupon's letter are her own notes.

February 2018, May 2018, June 2018, and July 2018 checks being accepted by Defendant IAM District Lodge 141. A letter from Defendant District Lodge 141 is attached hereto as **Exhibit 6**.

27. Plaintiff Rizzo-Rupon sent replacement checks for the March 2018 and April 2018 checks to Defendant IAM District Lodge 141 on December 27, 2018. Plaintiff Rizzo-Rupon's letter is attached hereto as **Exhibit 7**.

28. Upon information and belief, all Plaintiffs are current in their agency-fee payments.

## **CAUSES OF ACTION**

### **COUNT I – Agency fee**

29. Plaintiffs incorporate paragraph 1 through 28 as though fully set forth herein.

30. Union Defendants, under color of federal law, force employees to financially support the Union Defendants or suffer discharge from their jobs.

31. The Union Defendants' actions are authorized by 45 U.S.C. § 152 Eleventh, yet the federal government lacks a compelling governmental interest to require nonmembers to financially support a union.

32. Plaintiffs are suing the Union Defendants under the First and Fifth Amendments and under 28 U.S.C. § 2201, the Declaratory Judgment Act. More specifically, Plaintiffs seek a declaration that, under Janus and/or any other relevant case law, agency fees are unconstitutional in the Railway Labor Act context.

**DEMAND FOR RELIEF**

WHEREFORE, Plaintiffs hereby request that this court:

- a. Declare that the RLA's authorization of compulsory agency fees, 45 U.S.C. § 152 Eleventh is unconstitutional.
- b. Enjoin the Union Defendants from attempting to force Plaintiffs to financially support the Union Defendants as a condition of employment.
- c. Award appropriate compensatory and/or nominal damages.
- d. Award Plaintiffs their attorney fees along with costs; and
- e. Grant all other relief that the Court deems just, proper, and equitable.

Patrick J. Wright, Esq.* Mackinac Center Legal Foundation 140 W Main Street Midland, MI 48642 (989) 631-0900 wright@mackinac.org	By: <u>/s/ Matthew C. Moench</u> Matthew C. Moench, Esq. Moench Law, LLC 1303 Roger Avenue Bridgewater, NJ 08807 (908) 208-1910 moenchlawllc@gmail.com
* <i>pro hac vice</i> application pending	Counsel for Plaintiffs, Linda Rizzo-Rupon, Susan Marshall, and Noemio Oliveira
January 8, 2019	

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**EXHIBIT 1**

**NATIONAL MEDIATION BOARD  
REPRESENTATION MANUAL**

[SEAL]

Revised Text Effective June 12, 2018

**NOTICE**

This Manual provides general procedural guidance to the National Mediation Board's staff with respect to the processing of representation cases before the NMB. Such procedural guidance is not required by or subject to the Administrative Procedure Act. The provisions of this Manual are neither obligatory upon the Members of the Board nor do they constitute the exclusive procedure for the NMB's investigation of representation matters pursuant to the Railway Labor Act.

Mary L. Johnson  
General Counsel

(Revised text is effective June 12, 2018, and replaces all previous versions of the Manual as of that date.)

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business days after the date of the tally. Participants may respond to such allegations by 4 p.m., Eastern Time, seven (7) business days after the General Counsel's receipt of the interference allegations. All submissions must comply with the simultaneous service requirements in Manual Section 1.2.

Allegations of election interference must state a prima facie case that the laboratory conditions

were tainted and must be supported by substantive evidence. Allegations of election interference not sufficiently supported by substantive evidence will be dismissed.

If the NMB finds a prima facie case of election interference, the General Counsel will notify the participants in writing or electronically.

18.0 BARS TO REPRESENTATION APPLICATIONS

The NMB's representation bar procedures are set forth in the NMB Rule §1206.4 (29 CFR §1206.4).

19.0 MERGER PROCEDURES

19.1 Merger

Merger is a consolidation, merger, purchase, lease, operating contract, acquisition of control, or similar transaction of two or more business entities.

19.2 Authority

Pursuant to Section 2, Ninth, the NMB, upon an Application, has the authority to resolve representation disputes arising from a merger involving a Carrier or Carriers covered by the RLA. The NMB will consider these representation issues on a case-by-case basis.

19.3 Notice to NMB

A Carrier should notify the NMB electronically at [OLA-efile@nmb.gov](mailto:OLA-efile@nmb.gov) when any of the transactions described in Section 19.1 occur, or of:



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- 1) an intent to merge, at the same time it files with the Surface Transportation Board (STB) or the Department of Transportation (DOT); and
- 2) a completed merger including the date of the merger and the Carriers (or business entities) involved.

Notices must comply with the service requirements of Section 1.2.

### 19.4 Initiation of Procedure for Determination of a Single Transportation System

Any organization or individual may file an application, supported by evidence of representation or a showing of interest (See Section 19.601), seeking a NMB determination that a single transportation system exists.

### 19.5 Merger Investigations

After an application is filed, the NMB will conduct a pre-docket investigation to determine whether a single transportation system exists. The investigation may take any form appropriate to the determination.

#### 19.501 Factors Indicating a Single Transportation System

The following are some indicia of a single transportation system:

- (1) published combined schedules or combined routes;
- (2) standardized uniforms;

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- (3) common marketing, markings or insignia;
- (4) integrated essential operations such as scheduling or dispatching;
- (5) centralized labor and personnel operations;
- (6) combined or common management, corporate officers, and board of directors;
- (7) combined workforce; and,
- (8) common or overlapping ownership.

19.6 Procedure After Finding Single Transportation System

If the NMB determines that a single transportation system exists, the investigation will proceed to address the representation of the proper craft or class. The bar rules in NMB Rule §1206.4 (29 CFR § 1206.4) do not apply to applications filed under this section.

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**EXHIBIT 2**

39 NMB 294 (N.M.B.), 39 NMB No. 30,  
2012 WL 786234

National Mediation Board (NMB)

IN THE MATTER OF THE REPRESENTATION  
OF EMPLOYEES OF UNITED AIRLINES  
PASSENGER SERVICE EMPLOYEES

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Case No.

March 8, 2012

### CERTIFICATION

The services of the National Mediation Board (Board) were invoked by the International Association of Machinists and Aerospace Workers (IAM) on September 20, 2011, to investigate and determine who may represent for the purposes of the Railway Labor Act (RLA), as provided by Section 2, Ninth, thereof, personnel described as "Passenger Service Employees," employees of United Air Lines (Carrier).

At the time this application was received, these employees were represented in part by the IAM and in part by the International Brotherhood of Teamsters.

The Board assigned Investigators Maria-Kate Dowling and Angela I. Heverling to investigate.

### FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Passenger Service Employees, and by direction of the Board, the Investigators were instructed to conduct an election to determine the employees' representation choice.

The following is the result of the election as reported by Investigators Dowling and Heverling.

**Election Results for Passenger Service Employees**

Eligible Employees	16,720
Total Valid Votes	14,170
IAM	8,240
Other	65
Void	13
“No” Votes	5,865

The Board further finds that: the Carrier and employees in this case axe, respectively, a Carrier and employees within the meaning of the RLA, as amended; this Board has jurisdiction over the dispute involved herein; and the interested parties, as well as the Carrier, were given due notice of the Board’s investigation.

**CERTIFICATION**

NOW, THEREFORE, in accordance with Section 2, Ninth, of the RLA, as amended, and based upon its investigation pursuant thereto, the Board certifies that the International Association of Machinists and Aerospace Workers has been duly designated and authorized to represent for the purposes of the RLA, as amended, the craft or class of Passenger Service Employees, employees of United Air Lines/Continental Airlines, its successors and assigns,

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By direction of the NATIONAL MEDIATION BOARD.

Mary L. Johnson

General Counsel

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**EXHIBIT 3**

**UNITED** 



Passenger Service Employees  
2016 – 2021 Agreement

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Between United Airlines and  
The International Association of Machinists  
And Aerospace Workers (IAMAW)

ARTICLE 8: UNION REPRESENTATION

A. Recognition The Company recognizes the Union as the exclusive representative and sole collective bargaining agent with respect to rates of pay, rules and working conditions for all employees employed by the Company composing the craft or class of Passenger Service Employees for purposes of the Railway Labor Act, pursuant to the certification issued by the National Mediation Board on March 8, 2012, in Case No. R-7313.

B. Union Security

1. As a condition of employment, all employees of the Company covered by this Agreement will, on the Effective Date of this Agreement, become and remain members in good standing of the Union or, in the alternative, render the Union a monthly sum equivalent to the standard monthly dues required of the Union members ("Service Fees.") Employees covered by this Agreement and hired on or after the Agreement's effective date will comply with these requirements on or before the 60th day following their initial seniority date.

2. During the life of this Agreement the Company agrees to deduct from the pay of each member of the Union and remit to the Union standard initiation (or reinstatement) fee, Service Fees, and monthly membership dues uniformly

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levied in accordance with the constitution and by-laws of the Union as prescribed by the Railway Labor Act, as amended, provided such member of the Union voluntarily executes form(s), to be known as a check-off form. Such authorization form will be provided by the Union, and will provide such information as the Company may require to make the deductions. The Company will pay over to the District Lodge 141 the wages withheld for such fees and/or dues. The amount so withheld will be deducted from the appropriate paycheck, reported and paid to the Union monthly. The employee's employee number, last name, first name, middle initial, dues or fees deducted, dues rate, rate of pay, station code, department, job, and status of employment will be transmitted with the monthly fees/dues.

a. The Company will advise the Union of the name, employee number, hire date, home address, station code, department, job of any new hires and the names, employee numbers and dates of all other employees covered by the Agreement who have been terminated, laid off, retired, transferred, changed status, or recalled at the time the Company turns over the monies to the Union per above.

3. It will be the responsibility of any employee who is not on a dues deduction program to keep their membership current by direct payments of monthly dues or Service Fees to the Union.

4. No employee covered by this Agreement or an employee whose employment is terminated

pursuant to the provisions of this Section B, nor the Union, will have any claim for loss of time, wages or any other damages against the Company because of the Company's agreeing to this Section B of this Agreement or because of any alleged violation, misapplication, compliance or non-compliance with any of the provisions of this Section B. The Union will indemnify the Company and hold the Company harmless from any and all such claims and any and all legal fees incurred by the Company in connection therewith, except to the extent that such claims or fees are finally determined by a court of competent jurisdiction to have resulted from the gross negligence, fraud or willful misconduct of the Company. If the Company is named as a defendant or charged party in any action by an individual discharged pursuant to the provisions of this Article, the Company will promptly notify the Union and the Union will undertake the defense of the case. Subject to the Company's right to elect to undertake its own defense, the Union will maintain the exclusive right to defend, settle, mitigate damages, litigate, and/or take whatever action it deems necessary and proper through attorneys of the Union's choosing and at the Union's cost. If the Company decides to retain its own counsel, it will do so at its own cost, and not at the cost of the Union, and if the Company elects to undertake its own defense the Union will be relieved of its obligation in this Section to indemnify the Company and hold the Company harmless. Nothing in this Section will prohibit the Union from filing a claim against the Company for noncompliance with this Section B or obligate the Union to indemnify the Company for,



hold the Company harmless from, or defend the Company in the event the Union files such a claim against the Company.

5. Any employee maintaining, or maintaining and accruing, seniority under this Agreement but not employed in a classification covered by this Agreement will not be required to maintain Union membership during such employment but may do so at his option. Should such employee return to a classification covered by this Agreement, he will be required to become a member of the Union within 15 days after the date he returns to such classification, and will, as a condition of employment in classifications covered by this Agreement, become a member of the Union and maintain membership in the Union so long as this Section B remains in effect, to the extent of paying an initiation (or reinstatement) fee and/or monthly membership dues or Service Fees.

6. The payment of membership dues or Service Fees will not be required as a condition of employment during leave of absence without pay.

7. The provisions of this Section B will not apply to any employee covered by this Agreement to whom membership in the Union is not available by tender of initiation (or reinstatement) fee, if applicable, and monthly dues or Service Fees, upon the same terms and conditions as are generally applicable to any other employee of his classification at his point on the Company's system or in the local lodge on the Company's system to which assigned by the Union, or to any employee to whom membership in the Union is denied or

terminated for any reason other than the failure of the employee to tender initiation (or reinstatement) fee, if applicable, and monthly dues.

8. If an employee covered by this Agreement becomes delinquent in the payment of monthly dues or Service Fees, the Union will take steps necessary in accordance with its established procedures to notify the employee in writing that he is delinquent in the payment of monthly membership dues or Service Fees as specified herein and accordingly will be subject to discharge as an employee of the Company. If such employee still remains delinquent in the payment of dues or service fees after the Union has completed all steps in its established procedure, the Union will certify in writing to the Company that the employee has failed to remit payment of dues or Service Fees within the grace period allowed under the Union's procedure and is, therefore, to be discharged. The Company will then promptly notify the employee involved that he is to be discharged from the services of the Company and will promptly take proper steps to so discharge the employee.

9. When a member of the Union properly executes a dues or fees authorization check off form the President and Directing General Chairman of the Union will forward the necessary information to a Payroll Representative designated by the Company. A check off form must be completed in a legible manner acceptable to the Company or it will be returned to the President and Directing General Chairman of the Union for correction.

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10. Any notice of revocation of checkoff authorization as provided for in this Article or the Railway Labor Act, as amended, must be in writing, signed by the employee and 2 hard copies delivered by first class mail or other mode of delivery accepted in the ordinary course of business, addressed to the President and Directing General Chairman of the Union. Dues or Service Fee deductions will be continued until 1 copy of such notice of revocation is received by the appropriate Payroll Representative from the President and Directing General Chairman of the Union.

11. An employee who has executed a check off form and who (1) has been promoted to a job which is not covered by the Agreement and in which the employee does not pay a monthly administrative fee to retain seniority pursuant to Article 7.G.3, (2) resigns from the Company, (3) is laid off and accepts employment in classifications not covered by any IAM Agreement, or (4) is otherwise terminated from the employ of the Company, will be deemed to have automatically revoked his assignment as of the date of such action. If such an employee (1) transfers back or returns to a job covered by the Agreement, (2) is rehired, (3) is recalled, or (4) is reemployed, further deductions of Union dues will be made only upon execution and receipt of another check off form. An employee who has executed a check-off form who enters layoff status directly from a position covered by this Agreement will have his dues or Service Fees deductions automatically reinstated upon direct recall to a classification covered under this Agreement.

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12. The Union will be responsible to collect (1) back dues or Service Fees owed at the time of starting deductions for any employee, (2) dues or Service Fees missed because the employee was delinquent in dues or fees at the time of going on leave of absence, and (3) initiation (or reinstatement) fees or dues or Service Fees missed because of accidental errors in the Union's accounting procedure.

13. Dues or Service Fee deductions are to be withheld from the first pay date of the month. Should a deduction be missed, or in the event an insufficient amount is deducted the proper adjustment will be made from the next pay check(s) until collected.

14. Check off forms submitted to the Company at least 12 days or more before the first pay date of the month will commence deductions on that date. When a check off form is submitted to the Company that indicates an initiation (or reinstatement) fee is to be withheld that fee will be withheld equally from the first 2 pay dates of the month and dues or Service Fee deductions will commence the following month.

15. In the event of termination of employment, there will be no obligation of the Company to collect initiation (or reinstatement) fee or dues or Service Fees until all other deductions have been made, and such obligation to collect dues or Service Fees will not extend beyond the pay period to which the employee's last day of work occurs.

16. The seniority status and rights of employees granted leaves of absence to serve in the

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Armed Forces will not be terminated by reason of any of the provisions of this Section B, but such employees will upon resumption of employment in classifications covered by this Agreement be governed by the provisions of Section B.2 above.

17. When an employee is to be discharged by the Company under the provisions of this Section B, the discharge will be deemed to be for cause within the meaning of the terms of this Agreement. A grievance by an employee who is to be discharged as the result of an interpretation or application of the provisions of this Section B will be subject to the following procedure:

a. Such employee who believes that the provisions of this Section B pertaining to him have been improperly interpreted or applied and who desires a review must submit his request for review in writing within 5 days from the date he receives notification of the discharge. The request will be submitted to the Vice President of Labor Relations with a copy to the President and Directing General Chairman of the Union. The Vice President of Labor Relations or his designee will review the grievance and render a written decision, to the employee, with a copy to the President and Directing General Chairman of the Union not later than 10 days following receipt of the grievance.

b. If the decision is not satisfactory to either the employee or the Union, then either may appeal the grievance directly to the System Board of Adjustment within 15 days from

the date of the decision. The terms governing the Board of Adjustment will be applicable, except as otherwise specified herein.

c. During the period a grievance is pending under the provisions of this Section and until a decision is rendered by the Vice President of Labor Relations or his designee, or by the Board of Adjustment if appeal is made to that Board, the employee will not be discharged from the Company because of non-compliance with the terms of this Section A.

d. Saturdays, Sundays, and holidays will be excluded only from the time limits specified in this Section B.17.

C. Union Officials

1. The Union will notify the Company in writing of the election, appointment, or removal of Union shop steward(s). The District Lodge will notify the Company in writing of the Committee members at that location.

2. Effective upon the Date of Signing of this Agreement, the Company will assume the cost of a total of 150,000 hours of straight-time pay per year, to be used by shop stewards and other employees authorized by the Union for the purpose of administration of this Agreement and all other collective bargaining agreements between the Union and the Company.

a. Shop Stewards and other employees authorized by District Lodge 141 must give prior notice and report all time spent on

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Union business to the designated management representative.

b. The Union will apportion the total annual allotment of 150,000 hours among the Company collective bargaining agreements it administers. In the event of an increase or reduction in the number of such agreements, the parties will meet to discuss and agree upon a proportionate adjustment in the hours allotment.

3. The parties will work with each other in good faith to ensure both that (1) employees are reasonably represented in grievances and (2) the Company's operation continues without undue delay.

4. The Union will provide the Company with the names, addresses, and phone numbers of its official Union Representatives.

5. The Company will provide the Union a reasonable amount of time as needed (not to exceed 2 hours) to participate in new-hire orientation for employees covered under this Agreement.

6. If requested by the Union and agreed to by the Company, Local Committeemen may be assigned to the Day Shift and to Saturday and Sunday as regular days off. In the event a significant dispute arises and remains unresolved it may be escalated to the level of AGC and HR at that station/location and, if not resolved, to the VP of Labor Relations and the President and Directing General Chairman.

D. Union Travel and Access to Company Facilities

1. Union Travel Employees of the Union will be furnished positive space transportation over the lines of the Company for the purpose of administering this Agreement at the level and to the extent such passes are provided to officials of other unions representing other Company work groups.

2. Bulletin Boards

a. The Company will provide bulletins boards (maximum dimension 3' x 5') acceptable to the Company for the Union's exclusive use at each station/location where employees covered by this Agreement are located. The Company and the Union will determine the placement of bulletins boards by mutual agreement.

b. No political, inflammatory, controversial, or derogatory material will be permitted on Union bulletin boards. Union bulletin boards will be used exclusively for Union notices or materials regarding the following:

- Union recreational and social affairs
- Union elections
- Union appointments and results of Union elections
- Union meetings
- Educational materials relating to contract administration
- Excerpts from official Union publications



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There will be no other general distribution or posting by employees on the Company's property.

3. Union Access. The Company will sponsor the officially designated representative(s) of the Union in obtaining appropriate credentials (S.I.D.A. Badge). The Company agrees to admit to its bases the officially designated representative of the Union to transact business as is necessary for the administration of the Contract. Such business will not interfere with the operations of the Company.

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**EXHIBIT 4**

**International Association of  
Machinists and Aerospace Workers**

[SEAL]

**CONSTITUTION**

January 1, 2017

\* \* \*

**ARTICLE VII**

**GENERAL SECRETARY-TREASURER**

**Duties**

SEC. 1. The G.S.T. shall be the secretary and keep correct records of all meetings of the E.C. and of all conventions of the G.L. He/She shall cause the proceedings of all meetings of the E.C. to be printed in pamphlet form and mail a copy thereof to each L.L.

within 90 days from the date the minutes of the meeting are approved. He/She shall conduct all correspondence in the name of the G.L., excepting correspondence dealing with the duties and responsibilities of the office of the I.P., and be subject to the directions of the E.C. Whenever necessary he/she may visit any L.L. or D.L. for the purpose of instructing the officers in the performance of their duties. He/She shall assume responsibility regarding the issuance of Veteran Badges. He/She shall have the general supervision of the business of his/her office and, upon request, shall submit his/her books of account together with all papers, files, documents, etc., in his/her possession for the inspection of the E.C. and the certified public accountant. He/She shall also codify and index the various articles and sections of this Constitution.

### **Receipt of Funds**

SEC. 2. The G.S.T. shall receive all funds paid to the G.L. from all sources and distribute same to the credit of the accounts for which they are intended. District lodges, local lodges not affiliated with a full service district lodge, and unaffiliated local lodges, at their option, may elect to have all monthly membership dues and fees collected by the G.S.T. Initiation and reinstatement fees will be reconciled with the D.L. and/or L.L. The G.S.T. shall distribute the appropriate amounts from the monthly dues and fees collected to the D.L.s and LLs. He/She shall keep a systematically arranged book account between the G.L. and each L.L. He/She shall, upon request of any L.L., furnish a copy

of the expense account of any paid representative of the G.L. for the period specified by such Li., provided such request does not include a period prior to the next preceding G.L. audit.

### **Deposit of Funds**

SEC. 3. All monies received by the G.S.T. shall be deposited daily by him/her in a bank of sound financial standing in the name of the G.L., which deposit shall be subject to withdrawal check signed by the G.S.T. and countersigned by the LP. He/She shall invest, in conformity with the provisions as contained in SEC. 3, Art. V., the accumulated G.L. funds in excess of \$100,000 as directed by the E.C.

### **Per Capita Tax and Fees**

SEC. 4. The G.S.T. shall collect per capita tax in proportion to the business transacted as shown by the regular monthly report of each L.L., in accordance with the following rates, which include subscriptions to the I.A.M.'s magazine, THE JOURNAL, which will be published periodically, and the premium of L.L. and D.L. officers' and employees' bonds as required by law or G.L. policy, up to a maximum of \$10,000 as prescribed in SEC. 6 of this Art.

### **Monthly per capita tax for all members:**

Effective January 1, 2009, the monthly per capita tax due G.L. shall be equal to the per capita tax in

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effect for 2008 plus \$4.00 plus the percentage increase in the weighted average on a union-wide basis of one hour's earnings of each L.L. member in effect on the 31st day of August 2008. Notwithstanding any contrary language in Article XXII, Section 9, district lodges which are over the minimum Di. per capita may not add any part of this \$4.00 to their per capita tax without specific authorization from the membership and in accordance with D.L. bylaws.

Effective January 1, 2011, the monthly per capita tax due G.L. shall be increased by \$2.00 plus the average of the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) as published by the U.S. Department of Labor's Bureau of Labor Statistics and the Canadian Consumer Price Index as published by Statistics Canada. The "not seasonally adjusted" indices will be used. Notwithstanding any contrary language in Article XXII, Section 9, district lodges which are over the minimum D.L. per capita may not add any part of this \$2.00 to their per capita tax without specific authorization from the membership and in accordance with D.L. bylaws.

Effective January 1, 2012, and each January 1 thereafter, the monthly per capita tax due G.L. shall be increased by the percentage increase in the CPI indices as described above.

Ninety percent (90%) of the regular G.L. per capita tax or the reduced G.L. per capita tax, whichever is the lower, shall be allocated to the General Fund. Ten

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percent (10%) of the regular G.L. per capita tax or the reduced G.L. per capita tax, whichever is the lower, shall be allocated to the Strike Fund.

Benefits from the Strike Fund shall be paid in accordance with SEC. 6, Art. XVI.

**Monthly dues for**

**G.L. affiliation ..... determined by the E.C.**

**Unemployment stamp .....\$ 1.00**

**Permanent retirement card**

**for all members ..... \$15.00**

**Initiation or reinstatement per**

**capita tax..... \$15.00**

**Reinstatement per capita tax when dues books  
or dues cards are issued by G.S.T.**

**(Secs. 5, 15, and 19, Art. 1) ..... \$15.00**

**G.L. initiation or**

**reinstatement fee..... determined by the E.C.**

Upon receipt of per capita tax, accompanied by the report of any L.L., the G.S.T. shall furnish stamps as receipts, in proportion to the number of initiations, reinstatements and number of months' dues paid. He/She shall also keep a record of all members affiliated with G.L.

The G.S.T. shall furnish a uniform dues book or dues card at cost to L.Ls. in which stamps may be affixed and cancelled. Dues books shall contain spaces for the entering therein of transfers, assessments and the designation of the amount of dues charged by each L.L., and for the registering of votes in G.L. elections.

Space shall also be provided for the insertion of the Congressional or Assembly District, Legislative Assembly or Parliamentary Constituency of the member.

\* \* \*

## **ARTICLE XXII**

### **DISTRICT LODGES**

#### **Definition**

SEC. 1. A D.L. is a delegate body made up of representatives duly elected from the L.Ls. within the railroad or air transport system, industry, or locality in which the D.L. is established.

#### **Purpose**

SEC. 2. D.Ls. shall be established and chartered by the G.L. upon railroads and airlines, in industries where mutual shop interests require it, and in localities where 2 or more L.Ls. exist, provided the total membership is sufficient to meet all the requirements of this Art., for the purpose of securing mutual protection, harmonious action, and close cooperation in all matters relating to the trade.

#### **Jurisdiction**

SEC. 3. The jurisdiction of all D.Ls. shall be determined and defined by the E.C.

Each L.L. within such jurisdiction shall become affiliated with the D.L. unless specially exempted by said D.L. upon the approval of the E.C.

### **Authority**

SEC. 4. D.Ls. shall have authority over and control of all L.Ls. within their jurisdiction, subject to the approval, however, of the G.L. Effective January 1, 2006, all dues and assessments of the affiliated L.Ls. shall be remitted monthly to the D.L. S.T. in a manner, and on forms, determined by the D.L. S.T. The D.L. shall remit to the G.L. the Monthly Membership and Per Capita Tax Report for each affiliated L.L. The D.L. shall remit to the Li. the balance equal to the L.L. dues minus G.L. and D.L. per capita taxes and required affiliation fees. A detailed explanation shall accompany the remittance. The bylaws of the D.Ls., and the proposed amendments thereto, shall be submitted to the I.P. for his/her examination, correction, and approval before final adoption. The provisions of this Constitution shall, insofar as they are practical and adaptable, apply to and control all D.Ls.

### **Minimum Wage Scales**

SEC. 5. D.Ls. shall establish a minimum scale of wages in their respective localities for members employed as machinery erectors, and no member of any L.L. shall accept work as a machinery erector under the minimum wage established for the locality where employed.

D.Ls. may also establish minimum wage rates in their respective localities wherever they are in a position to enforce such rates, subject to the approval of the E.C.

**Qualifications for Office**

SEC. 6. Any member in good standing who is not barred from holding union office by applicable civil law, or ineligible therefore under applicable provisions of this Constitution, is qualified for election as a D.L.

\* \* \*

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**EXHIBIT 5**

[SEAL]

9414 7118 9986 4033 6847 43  
CERTIFIED MAIL  
TRACKING NUMBER

Susan D. Marshall  
u241161  
156 Plainfiled Road  
Metuchen, NJ 08840

[Illegible]

Dear Susan D. Marshall,

We want to take this opportunity, once again, to welcome you to employment at United Airlines and to give you some information about the Union that represents you in the workplace. District Lodge 141 of the International Association of Machinists and Aerospace Workers (the IAM or the Machinists Union) is the collective bargaining representative for the workers at this facility, and your membership is with Local Lodge 914. You should already have received information about your rights and obligations under the contract between the IAM and the Company and the many important benefits that come with IAM membership.



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We want to reiterate that the wages, health insurance, retirement benefits, and other protections provided by this collective bargaining agreement were not provided by the Company as an act of generosity. Rather, they are the result of the collective bargaining process. Without the legal protection of the collective bargaining agreement, your employer would be free to change or even eliminate health insurance, vacations and holidays, retirement, and many other benefits you will enjoy. And, without a strong union supported by the employees, the Union's ability to protect and improve your wages and benefits in the future may suffer.

We encourage you to join your union. The Union's Membership Application, Check-Off Authorization, Notice of Rights under your collective bargaining agreement, and the contract's union security clause are enclosed. The complete bargaining agreement can be found on our website at [www.iam141.org](http://www.iam141.org).

Please note that your fellow employees voted to include in the collective bargaining agreement a provision requiring all employees to pay monthly dues or fees to the Union. We think this is only fair because every employee of this Company benefits from the hard won collective bargaining agreement. But more importantly, it was the democratically reached decision of your co-workers.

As explained in the enclosure, while monthly fees or dues payments are required, formal membership in the Union is not required. You should understand, however, that if you decline membership you will be

## App. 66

giving up the right to vote for Union officers, attend meetings to determine bargaining demands, or participate in the ratification of collective bargaining agreements and strike votes; the right to serve on negotiating committees; the right to serve as delegates to the International Union's Convention; as well as the right to enjoy the benefits provided by the Union Privilege Program, including low-interest credit cards, prescription drug cards, life insurance, legal and travel services.

According to the IAM's records, you are recognized as a fee objector. Therefore, your fee will be reduced per the letter you received. The reduced union initiation fee is \$77.87 and the reduced non-member fee is \$43.26/month. You should have already received notice of the obligation to pay initiation and monthly dues or fees when you joined the bargaining unit, but whether or not you did, you now have thirty (30) days from the date of this letter to make you initial payments of the initiation/reinstatement fee and the first month's dues. If you fall two months in arrears in making the required payments you will be terminated from employment under the terms of the collective bargaining agreement. Also note the legal obligations set out in the material enclosed.

After making these payments, you must continue to be in compliance with your financial obligations by making monthly payments to the union. The easiest way to meet your obligation going forward is to sign the attached check-off authorization, so that your monthly fees are automatically deducted from your paycheck. If

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you do not authorize check-off, you are responsible to make monthly payments by check to the union. Even if you agree to check-off, you still should send your first payment for initiation/reinstatement fee and one month's dues or fees to this office by check.

Please fill out and return the application with your payment of \$121.13 to I.A.M.A.W District Lodge 141 at the address indicated on the letterhead. If you have any questions about these materials or have some explanation for nonpayment, please do not hesitate to contact us.

The Union belongs to its members, and we want every bargaining unit employee we represent to be an active, involved union member. Anytime you wish to become a member, just seek out a union representative and we will help you accomplish that.

Fee free to call our toll-free number at 888-608-1411 for any questions.

In Solidarity,

/s/ Alexander Gerulis  
Alexander Gerulis  
Secretary Treasurer

Enclosure

cc: S. Pantoja – GVP, Transportation  
J. Tiberi – COS, Transportation  
O. Cabrera – 1914 ST

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[SEAL]

September 8, 2017

Linda Rizzo-Rupon  
u222104  
126 Main St  
Whitehouse Station, NJ 08889

Dear Linda Rizzo-Rupon,

We want to take this opportunity, once again, to welcome you to employment at United Airlines and to give you some information about the Union that represents you in the workplace. District Lodge 141 of the International Association of Machinists and Aerospace Workers (the IAM or the Machinists Union) is the collective bargaining representative for the workers at this facility, and your membership is with Local Lodge 914. You should already have received information about your rights and obligations under the contract between the IAM and the Company and the many important benefits that come with IAM membership.

We want to reiterate that the wages, health insurance, retirement benefits, and other protections provided by this collective bargaining agreement were not provided by the Company as an act of generosity. Rather, they are the result of the collective bargaining process. Without the legal protection of the collective bargaining agreement, your employer would be free to change or even eliminate health insurance, vacations and holidays, retirement, and many other benefits you will enjoy. And, without a strong union supported by the

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employees, the Union's ability to protect and improve your wages and benefits in the future may suffer.

We encourage you to join your union. The Union's Membership Application, Check-Off Authorization, Notice of Rights under your collective bargaining agreement, and the contract's union security clause are enclosed. The complete bargaining agreement can be found on our website at [www.iam141.org](http://www.iam141.org).

Please note that your fellow employees voted to include in the collective bargaining agreement a provision requiring all employees to pay monthly dues or fees to the Union. We think this is only fair because every employee of this Company benefits from the hard won collective bargaining agreement. But more importantly, it was the democratically reached decision of your co-workers.

As explained in the enclosure, while monthly fees or dues payments are required, formal membership in the Union is not required. You should understand, however, that if you decline membership you will be giving up the right to vote for Union officers, attend meetings to determine bargaining demands, or participate in the ratification of collective bargaining agreements and strike votes; the right to serve on negotiating committees; the right to serve as delegates to the International Union's Convention; as well as the right to enjoy the benefits provided by the Union Privilege Program, including low-interest credit cards, prescription drug cards, life insurance, legal and travel services.

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According to the IAM's records, you are recognized as a fee objector. Therefore, your fee will be reduced per the letter you received. The reduced union initiation fee is \$77.87 and the reduced non-member fee is \$43.26/month. You should have already received notice of the obligation to pay initiation and monthly dues or fees when you joined the bargaining unit, but whether or not you did, you now have thirty (30) days from the date of this letter to make your initial payments of the initiation/reinstatement fee and the first month's dues. If you fall two months in arrears in making the required payments you will be terminated from employment under the terms of the collective bargaining agreement. Also note the legal obligations set out in the material enclosed.

After making these payments, you must continue to be in compliance with your financial obligations by making monthly payments to the union. The easiest way to meet your obligation going forward is to sign the attached check-off authorization, so that your monthly fees are automatically deducted from your paycheck. If you do not authorize check-off, you are responsible to make monthly payments by check to the union. Even if you agree to check-off, you still should send your first payment for initiation/reinstatement fee and one month's dues or fees to this office by check.

Please fill out and return the application with your payment of \$121.13 to I.A.M.A.W District Lodge 141 at the address indicated on the letterhead. If you have any questions about these materials or have some

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explanation for nonpayment, please do not hesitate to contact us.

The Union belongs to its members, and we want every bargaining unit employee we represent to be an active, involved union member. Anytime you wish to become a member, just seek out a union representative and we will help you accomplish that.

Feel free to call our toll-free number at 888-608-1411 for any questions.

In Solidarity,

/s/ Alexander Gerulis  
Alexander Gerulis  
Secretary Treasurer

Enclosure

cc: S. Pantoja – GVP, Transportation  
J. Tiberi – COS, Transportation  
O. Cabrera – 1914 ST

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[SEAL]

9414 7118 9986 4033 8832 28  
CERTIFIED MAIL  
TRACKING NUMBER

September 8, 2017

Noemio M. Oliveira  
u242113  
2275 Biddle Lane  
Easton PA 18040

[SEAL]

ARTICLE ADDRESSED TO:

Noemio M. Oliveira  
u242113  
2275 Biddle Lane  
Easton PA 18040-8084

Dear Noemio M. Oliveira,

We want to take this opportunity, once again, to welcome you to employment at United Airlines and to give you some information about the Union that represents you in the workplace. District Lodge 141 of the International Association of Machinists and Aerospace Workers (the IAM or the Machinists Union) is the collective bargaining representative for the workers at this facility, and your membership is with Local Lodge 914. You should already have received information about your rights and obligations under the contract between the IAM and the Company and the many important benefits that come with IAM membership.

We want to reiterate that the wages, health insurance, retirement benefits, and other protections provided by this collective bargaining agreement were not provided by the Company as an act of generosity. Rather, they are the result of the collective bargaining process. Without the legal protection of the collective



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bargaining agreement, your employer would be free to change or even eliminate health insurance, vacations and holidays, retirement, and many other benefits you will enjoy. And, without a strong union supported by the employees, the Union's ability to protect and improve your wages and benefits in the future may suffer.

We encourage you to join your union. The Union's Membership Application, Check-Off Authorization, Notice of Rights under your collective bargaining agreement, and the contract's union security clause are enclosed. The complete bargaining agreement can be found on our website at [www.iam141.org](http://www.iam141.org).

Please note that your fellow employees voted to include in the collective bargaining agreement a provision requiring all employees to pay monthly dues or fees to the Union. We think this is only fair because every employee of this Company benefits from the hard won collective bargaining agreement. But more importantly, it was the democratically reached decision of your co-workers.

As explained in the enclosure, while monthly fees or dues payments are required, formal membership in the Union is not required. You should understand, however, that if you decline membership you will be giving up the right to vote for Union officers, attend meetings to determine bargaining demands, or participate in the ratification of collective bargaining agreements and strike votes; the right to serve on negotiating committees; the right to serve as delegates to the International Union's Convention; as well as the

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right to enjoy the benefits provided by the Union Privilege Program, including low-interest credit cards, prescription drug cards, life insurance, legal and travel services.

The union initiation fee is \$100.00 and the dues rate is \$57.34/month. You should have already received notice of the obligation to pay initiation and monthly dues or fees when you joined the bargaining unit, but whether or not you did, you now have thirty (30) days from the date of this letter to make your initial payments of the initiation/reinstatement fee and the first month's dues. If you fall two months in arrears in making the required payments you will be terminated from employment under the terms of the collective bargaining agreement. Also note the legal obligations set out in the material enclosed.

After making these payments, you must continue to be in compliance with your financial obligations by making monthly payments to the union. The easiest way to meet your obligation going forward is to sign the attached check-off authorization, so that your monthly fees are automatically deducted from your paycheck. If you do not authorize check-off, you are responsible to make monthly payments by check to the union. Even if you agree to check-off, you still should send your first payment for initiation/reinstatement fee and one month's dues or fees to this office by check.

Please fill out and return the application with your payment of \$157.34 to I.A.M.A.W District Lodge 141 at the address indicated on the letterhead. If you have

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any questions about these materials or have some explanation for nonpayment, please do not hesitate to contact us.

The Union belongs to its members, and we want every bargaining unit employee we represent to be an active, involved union member. Welcome to the IAMI

Feel free to call our toll-free number at 888-608-1411 for any questions.

In Solidarity,

/s/ Alexander Gerulis  
Alexander Gerulis  
Secretary Treasurer

Enclosure

cc: S. Pantoja – GVP, Transportation  
J. Tiberi – COS, Transportation  
O. Cabrera – 1914 ST

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**EXHIBIT 6**

[SEAL]

7/17/2018

Linda Rizzo-Rupon  
U222104  
126 Main Street  
Whitehouse Station, NJ 08889-3692

Re: Objector Fee Payments

Dear Ms. Linda Rizzo-Rupon,

Below is the status of your payments for 2018:

Jan-18, #1276, \$43.26 deposited by DL141  
Feb-18, #1279, \$43.26, deposited by DL141  
Mar-18, #1286, \$43.26, returned to you, requested  
that it be sent to Local 914  
Apr-18, #1300, \$44.01, returned to you, requested that  
it be sent to Local 914  
May-18, #1369, \$44.01 forwarded it to Local 914 for  
deposit  
Jun-18, #1316, \$44.01, deposited by DL141  
Jul-18, #1323, \$44.01, deposited by DL141

As of today, Local 914 has not yet received your March and April payments. Please forward the payments to them as soon as possible. As you might be aware, when the payment falls two months behind, you could be charged a reinstatement fee which is equivalent to 3 times monthly fees.

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Please kindly discard this notice if the payments have been sent recently. Feel free to call if you have any questions.

Payling Massingill  
Assistant to Secretary Treasurer  
IAMAW District Lodge 141  
1771 Commerce Drive, Suite 103  
Elk Grove Village, IL 60007  
Office 847-640-2222 ext 152  
Cell 650-759-0822

cc: A. Gerulis, ST  
R. Creighton, AGC  
T. Galante, ST

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**EXHIBIT 7**

Lin Rizzo-Rupon  
U222104

December 27, 2018

I.A.M. District Lodge 141  
1765 Commerce Drive  
Suite 101  
Elk Grove Village, IL 60007-2139

Dear Sir or Madam,

Enclosed you will find copies of two checks that you returned to me because you “requested that it be sent to Local 914.”

Since I was instructed in your letter dated September 8, 2017, to send all payments to the Illinois address,

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and since you have been accepting and cashing all prior and subsequent checks sent to that original address, I will again attempt to remit these payments reflecting my March 1 and April 1 payments.

Regards,

Lin Rizzo-Rupon

Encs. 3

Ck #1372

Ck #1373

Copies of Returned Cks.

---

**LINDA RIZZO-RUPON** 11-06 **1372**  
126 MAIN STREET 55-135/312  
WHITEHOUSE STATION, NJ 08889-3692 872

27 Dec '18

Date

Pay to the

Order of I-A-M District Lodge 141

\$ 43<sup>26</sup>

Forty Three and 26/100 Dollars

[Illegible]

**Bank**

America's Most Convenient

Bank

Replaces ck# 1286

/s/ Linda Rizzo-Rupon

For for 3/1/18 payment

**1372**

---

---

**LINDA RIZZO-RUPON** 11-06 **1373**  
126 MAIN STREET 55-135/312  
WHITEHOUSE STATION, NJ 08889-3692 872

27 Dec '18

Date

Pay to the

Order of I-A-M District Lodge 141 \$ 44<sup>01</sup>

Forty Four and 01/100 Dollars [Illegible]

**Bank**

America's Most Convenient  
Bank

Replaces ck# 1300 /s/ Linda Rizzo-Rupon  
For for 4/1/18 payment **1373**

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JS 44

(Rev. 06/17) **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of churl. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (*SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM*)

**I. (a) PLAINTIFFS**

Linda Rizzo-Rupon, Susan Marshall, Noemio Oliveira

**(b) County of Residence of First Listed Plaintiff**  
Hunterdon County

*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c) Attorneys** *(Firm Name, Address, and Telephone Number)*

Moench Law, LLC, 1303 Roger Avenue, Bridgewater,  
NJ 08807 908-208-1910

**DEFENDANTS** International Association of Machinists and Aerospace Workers, AFL-CIO District 141 Local 914, et al.

County of Residence of First Listed Defendant  
Union County

*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

**II. BASIS OF JURISDICTION** *(Place an "X" in One Box Only)*

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question<br><i>(U.S. Government Not a Party)</i> |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br><i>(Indicate Citizenship of Parties in Item III)</i>   |



**III. CITIZENSHIP OF PRINCIPAL PARTIES**

*(Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)*

	<b>PTF</b>	<b>DEF</b>
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
Incorporated <i>or</i> Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Incorporated <i>and</i> Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

Click here for: [Nature of Suit Code Descriptions.](#)

**CONTRACT**

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Students Loans (Excludes Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders' Suits
- 190 Other Contract
- 195 Contract Product Liability
- 196 Franchise

**REAL PROPERTY**

- 210 Land Condemnation
- 220 Foreclosure B
- 230 Rent Lease & Ejectment
- 240 Torts to Land
- 245 Tort Product Liability
- 290 All Other Real Property

**TORTS**

**PERSONAL INJURY**

- 310 Airplane
- 315 Airplane Product Liability
- 320 Assault, Libel & Slander
- 330 Federal Employers' Liability
- 340 Marine
- 345 Marine Product Liability
- 350 Motor Vehicle
- 355 Motor Vehicle Product Liability
- 360 Other Personal Injury
- 362 Personal Injury – Medical Malpractice
- 365 Personal Injury – Product Liability
- 367 Health Care/Pharmaceutical Personal Injury  
Product Liability
- 368 Asbestos Personal Injury Product Liability

**PERSONAL PROPERTY**

- 370 Other Fraud
- 371 Truth in Lending
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability

**CIVIL RIGHTS**

- 440 Other Civil Rights
- 441 Voting

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- 442 Employment
- 443 Housing/Accommodations
- 445 Amer. w/Disabilities – Employment
- 446 Amer. w/Disabilities – Other
- 448 Education

**PRISONER PETITIONS**

**Habeas Corpus:**

- 463 Alien Detainee
- 510 Motions to Vacate Sentence
- 530 General
- 535 Death Penalty

**Other:**

- 540 Mandamus & Other
- 550 Civil Rights
- 555 Prison Condition
- 560 Civil Detainee – Conditions of Confinement

**FORFEITURE/PENALTY**

- 625 Drug Related Seizure of Property  
21 USC 881
- 690 Other

**LABOR**

- 710 Fair Labor Standards Act
- 720 Labor/Management Relations
- 740 Railway Labor Act
- 751 Family and Medical Leave Act
- 790 Other Labor Litigation
- 791 Employee Retirement Income Security Act

**IMMIGRATION**

- 462 Naturalization Application
- 465 Other Immigrations Actions

**BANKRUPTCY**

- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**

- 820 Copyrights
- 830 Patent
- 835 Patent – Abbreviated New Drug Application
- 840 Trademark

**SOCIAL SECURITY**

- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

**FEDERAL TAX SUITS**

- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**

- 375 False Claims Act
- 376 Qui Tam (31 USC 3729(a))
- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce
- 460 Deportation
- 470 Racketeer Influenced and  
Corrupt Organizations
- 480 Consumer Credit
- 490 Cable/Sat TV
- 890 Other Statutory Actions
- 891 Agricultural Acts

- 893 Environmental Matters
- 895 Freedom of Information Act
- 896 Arbitration
- 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- 950 Constitutionality of State Statutes

**V. ORIGIN** (*Place an "X" in One Box*)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (*specify*)
- 6 Multidistrict Litigation – Transfer
- 8 Multidistrict Litigation – Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing  
**(Do not cite jurisdictional statutes unless diversity):**  
28 USC 2201 and First and Fifth Amendments to the  
United States Constitution

Brief description of cause:

The Railway Labor Act's authorization of compulsory  
agency fees is unconstitutional

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER  
RULE 23, F.R.Cv.P.

**DEMAND \$**

undetermined

CHECK YES only if demanded in complaint:

**JURY DEMAND:**  Yes  No

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**VIII. RELATED CASE(S) IF ANY** *(See instructions):*

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF  
RECORD

01/8/2019

/s/ Matthew Moench

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING  
IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

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