



"We Move America"

Transport Workers Union of America, AFL-CIO

Harry Lombardo
International President

John Samuelson
International Executive Vice President

Alex Garcia
International Secretary-Treasurer

John Bland
Administrative Vice President

Gary E. Maslanka
Administrative Vice President

DETERMINATION OF INTERNATIONAL EXECUTIVE COUNCIL REGARDING ARTICLE XXIII COMPLAINT OF TWU LOCALS 541 AND 544

The Presidents of TWU Locals 541 and 544 filed a written Article XXIII complaint dated April 11, 2014 (the "Complaint") with International Secretary-Treasurer Alex Garcia. The Presidents contend in the Complaint that it is brought by the Locals.

The Complaint challenges a decision of TWU that Locals 541 and 544 cease negotiations with American Airlines, Inc. until further notice (the current American Airlines, Inc. is the new entity resulting from the recent merger of American Airlines and US Airways). The Complaint asserts that this International decision is contrary to Article XXV, Section 4(a) of the TWU Constitution and the Union's duty of fair representation (DFR) and requests that TWU "immediately communicate to American Airlines that contract negotiations must be resumed without delay." *see* Complaint at 1.

Pursuant to the procedures of Article XXIII of the TWU Constitution this Complaint was referred to the International Executive Council (IEC or Council) for decision. For the reasons described below, the IEC has determined that these claims are without merit; no hearing on this need be held to reach this determination.

Background and Decision to Suspend Negotiations

TWU is the exclusive collective bargaining representative of the separate crafts and classes of ground school and simulator instructors and flight simulator technicians at American and US Airways. Locals 541 and 544 assist in handling representation for these employees, but are not the bargaining representatives for these groups.

Although no single carrier petition has been filed for the class or craft involved on the merged airline (or for any other TWU-represented class or craft on the merged airline), Locals 541 and 544 entered into negotiations with American for a new contract to apply to the entire class or craft at the merged airline. TWU determined to suspend these negotiations until further notice.

Executive Council Vice Presidents

Patricia Bowden
Charles Cerf
Michael Conigliaro
Dale Danker
Sean Doyle
Garry Drummond
Jerome Lafragola
Tom Lenane
Carl Martin
Thom McDaniel
Curtis Tate
Tony Utano
James Whalen

Council Members

Delisa Brown
Joe Carbon
John Chiarello
Brian Clarke
LaTonya Crisp-Sauray
John Feltz
Horace Marves
Gary Shults
Kevin Smith

Executive Board

Matthew Ahern
Bedennia Barnes
Richard Boehm
Jon Bradford
Ralph Darnell
Richard Davis
Derick Echevarria
Fred Fink
Todd Gage
Angel Giboyeaux
Amy Griffin
Jim Guido
Kevin Harrington
Maurice Jenkins
Don May
Mike Mayes
John Menshon
Benyoel Morgan
Thomas Murray
J.P. Patafio
John Plowman
Dan Rivera
Richard Rocco
Audrey Stone
Dane Stricoff
Robert Taylor
Luis Ventura
David Virella
Clarence Washington
Eric Williams



The Complaint's Challenge

We address each of the Complaint's two challenges separately below – the Complaint claim that TWU's decision violated Article XXV, Section 4(a) of the TWU Constitution and the claim that this decision breached TWU's DFR.

Claim Under Article XXV, Section 4(a) of the TWU Constitution. This provision provides among other things that the International President “shall be notified of all collective bargaining negotiations,” that he or she or his designated representative(s) “shall have the right to participate in any negotiations to the extent of having a voice therein, but shall not have a right to vote in any decision of a Local Union in connection with negotiations.”

The Complaint bases its claim that this provision was breached on the assertion that the International President “reportedly” suspended the Locals' negotiations with American and that this Constitutional provision limits “the International's participation in contract negotiations via the International President or his representative. Complaint at 1. This claim fails for two reasons.

First, TWU suspended the negotiations (not the International President) and Section 4(a) of Article XXV does not limit actions of the International as an organization.

Second, the Complaint misconstrues the import of Article XXV, Section 4(a). It applies only when the TWU local conducting the negotiations is the bargaining representative of the employees to be covered by the negotiated agreement. This, however, has no application here where the International is the bargaining representative. Under the circumstances presented here, no Article XXV, Section 4(a) limitations could or should be placed on decision-making determinations of the International or its top officer (limited to having a “voice” but not having a “vote” in a negotiation decision). It is the International in this situation (where it is the bargaining representative) that has the legal bargaining obligation and therefore needs the appropriate flexibility to make decisions based on the circumstances presented. As a result, it makes no sense that Article XXV, Section 4(a) could provide what the Complaint contends; instead, this Constitutional provision must not apply here and the International must be able to exercise its appropriate bargaining judgments. This is not to say that TWU locals have no role in negotiations here; but such role must be in accord with the International's position as collective bargaining agent and the terms of the TWU Constitution.

DFR Breach Claim. Even assuming that a local could claim a DFR breach, no viable DFR claim has been asserted here. The Complaint contends that the International could not “terminate contract negotiations . . . in bad faith or in an arbitrary manner.” The Locals, however, fail to offer any evidence of any “bad faith” or “arbitrary” TWU conduct.

DFR law cited in the Locals' complaint demonstrates that TWU is provided substantial flexibility in making judgments about how to represent its members, including with regard to negotiations. Here, the International made a judgment that suspending negotiations would serve the interest of TWU and its represented employees at American and pre-merger US Airways – including the members of the Locals. The International, as the bargaining representative, is authorized to make such judgments – and the Complaint provides no basis for questioning that determination, let alone offer any reason to conclude that this International decision is founded on bad faith or arbitrary decision-making.

To the extent the Complaint is relying on the purported breach of the TWU Constitution to try to find a basis for the DFR claim, *but see* Complaint at 2 (advancing DFR breach claim even “assuming *arguendo* that the International had the constitutional right to terminate contract negotiations), the claim has no foundation; as shown above, no basis exists for claiming that Article XXV, Section 4(a) of the TWU Constitution was violated. That TWU did not provide the Local Presidents with the basis for its determination, as claimed in the Complaint (at 1 & 2), does not constitute a violation of any duty (and nothing in the Complaint supports a claim that this somehow would constitute a DFR breach). And, that members are currently working under bankruptcy concessionary agreements, *see* Complaint at 1, does not alter the basic principle that the International may under the circumstances determine that negotiations should be suspended at the current time – for the interest of the members and the union. This is not unusual; unions seeking to gain more for their members and strengthen the union will at times determine that this can best be achieved by holding negotiations in abeyance.

Conclusion

The charges in the Complaint amount to no more than a dissatisfaction with a TWU strategy judgment call that the interests of its members at the carriers, including the Locals’ members, and the interests of the union would best be served by suspending negotiations at the current time. We understand that there may be disagreements regarding the timing of negotiations but this is a matter that in the end falls within the discretion of TWU for decision. The Local Presidents are certainly able to voice their positions, but they have raised no contentions to support their claims that the TWU decision here breached the TWU Constitution or its DFR.

Unanimously passed by International Executive Council on June 10, 2014



Alex Garcia
International Secretary-Treasurer

AG:tt
opeiu-153