

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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In re:

UAL CORPORATION, et al.,

Debtors/Appellees,

Case No. 05 CV 101

Hon. John W. Darrah

UNITED RETIRED PILOTS BENEFIT PROTECTION
ASSOCIATION, ROGER D. HALL, DENNIS D. DILLON,
GERARD TERSTIEGE, EUGENE M. CUMMINGS,
RAYMOND P. FINK, JAMES M. KRASNO and
WILLIAM L. RUTHERFORD,

Appellants,

v.

UNITED AIR LINES, INC., et al.,

Appellee.

) Appeal from U.S. Bankruptcy
) Court, Northern Dist. of Ill.
) Case No. 02 B 48191
) Judge Eugene Wedoff

**AMENDED REPLY MEMORANDUM IN FURTHER SUPPORT
OF URPBPA'S MOTION FOR LEAVE TO APPEAL**

Appellants reply to the response briefs of Air Line Pilots Association, International's ("ALPA") and the Debtors' ("United") filed in objection to URPBPA's Alternative Motion for Leave to Appeal as follows:

I. Introduction

On December 14, 2004, the bankruptcy court ruled that it does not have the authority, under 11 U.S.C. § 1113, to appoint an authorized representative to represent United's retired pilots in connection with United's plan to terminate the United Airlines Pilot Defined Benefit Pension Plan (the "Pilot Plan"), the plan through which the retired pilots receive "tax qualified" and "non tax-qualified" pension benefits. URPBPA filed a notice of appeal with respect to the December 14, 2004 order and also filed an alternative motion for leave to appeal.

Under 11 U.S.C. § 1113(f), a debtor may not “unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section [§ 1113].” In order to comply with the provisions of § 1113, the debtor must

make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal...

§ 1113(b)(1)(A) (as stated in Century Brass, a Second Circuit opinion discussed below, for purposes of § 1113 the term “employees” includes retired employees). The debtor must “provide...the representative of the employees with such relevant information as is necessary to evaluate the proposal.” § 1113(b)(1)(B). The debtor must “...meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such an agreement.” § 1113(b)(2). If an agreement cannot be reached, a hearing regarding the debtor’s proposal will be held pursuant to § 1113(d)(1) where the debtor must prove that it has satisfied its § 1113 obligations and that the proposal it made includes only “those necessary modifications in the employee benefits and protections that are necessary to permit the reorganization of the debtor...” § 1113(b)(1)(A) and (c)(1).

The December 14, 2004 order denying URPBPA’s motion for the appointment of an “authorized representative” is a final and appealable order because it denied United’s retired pilots access to the § 1113 process and the protections afforded in connection with that process. As a result of the order, United never made a § 1113 proposal to a retired pilot representative with respect to United’s plan to terminate the Pilot Plan. United has excluded the retired pilots from all negotiations related to the Pilot Plan and has, instead, conducted all such negotiations with ALPA, who refuses to represent the retired pilots. The order relieved United of its obligation to prove, at a § 1113 hearing between United and the retired pilots, that the termination of the Pilot Plan is “necessary.”

As a result of their § 1113 negotiations, United and ALPA reached an agreement (labeled Letter Agreement 05-01) and on January 21, 2005, the bankruptcy court ruled, over URPBPA's objection, that the agreement will be approved if it is ratified by the active pilots. This agreement provides the active pilots with a number of "replacement benefits," including \$550 million in convertible notes, access to a new profit sharing plan, a new defined contribution plan and other benefits, in exchange for ALPA's promise that it will not resist the termination of the Pilot Plan. Retired pilots, who live on fixed incomes and who will suffer a devastating loss of income if the Pilot Plan is terminated, receive nothing. The agreement shows that when retirees are excluded from § 1113 negotiations, other parties may decide to take advantage of them.

Even though United has continued to engage in separate § 1113 negotiations with other parties, including ALPA, no § 1113 proceeding was ever initiated between United and its retired pilots. An order that prevents a party from participating in a bankruptcy proceeding which affects its interests, or which prevents the proceeding from beginning in the first place, is a final order. An expeditious reversal of the December 14, 2004 order will allow United's retired pilots to begin participating in a process from which they have been wrongfully excluded.

II. Reply To Arguments Raised By United

A. The December 14, 2004 Order Is A Final and Appealable Order

United's first argument is that the December 14, 2004 order is not a final and appealable order. United is wrong. It is a final order subject to review under 28 U.S.C. § 158(a)(1).

The finality of orders is interpreted more liberally in bankruptcy cases because of "the need to tie up the many subsidiary matters that litter the road to the distribution of assets in bankruptcy." In re Kilgus, 811 F.2d 1112, 1116 (7th Cir. 1987); *see also* BA Leasing v. UAL Corp., 2003 WL 22176068, at *5 (N.D. Ill. 2003) *citing* In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1298 (7th Cir. 1997) (finality of bankruptcy orders viewed with a "relaxed eye").

Orders allowing or denying claims or motions for relief from the automatic stay, decisions involving property ownership, exemptions, sanctions and the appointment of trustees, judicial sales orders, substantive consolidation orders and orders confirming bankruptcy plans are final orders. In re Wade, 991 F.2d 402, 406 (7th Cir. 1992) (citing Ginsberg, *Bankruptcy: Text, Statutes, Rules*, § 1.04(b) (2nd Ed.1991 Supp.)); In re Comer, 716 F.2d 168, 172 (3d Cir. 1983); In re Bonham, 229 F.3d 750 (9th Cir. 2000).

In In re Amatex Corp., 755 F.2d 1034, 1039-40 (3d Cir. 1985), Amatex's request for the appointment of a guardian ad litem to represent future claimants was denied after the bankruptcy judge concluded that future claimants did not have cognizable bankruptcy claims or the right to participate in Chapter 11 proceedings. On appeal, the Third Circuit held that the denial of the appointment of a legal representative for future claimants was an immediately appealable, final order because the decision excluded future claimants from participating in the bankruptcy proceeding. The court stated that considerations unique to bankruptcy appeals require that courts consider "finality in a more pragmatic and less technical way...[t]o avoid the waste of time and resources that might result from reviewing discrete portions of the action only after a plan of reorganization is approved." Amatex, 755 F.2d at 1039; *see also* In re Marin Motor Oil, 689 F.2d 445, 447 (3d Cir. 1982) (order denying a creditors' committees' motion to intervene in an adversary proceeding is a final order because, as a general rule, orders denying requests to intervene are final orders); Shea v. Angulo, 19 F.3d 343, 345 (7th Cir. 1994).

The December 14, 2004 order is a final order because it has prevented the retired pilots from participating in § 1113 proceedings regarding the Pilot Plan. The order must be reviewed quickly because United and ALPA continue to exclude the retired pilots from discussions related to the fate of the Pilot Plan (ongoing discussions are called for in Letter Agreement 05-01) and because as United gets closer to the date it alleges it will seek to emerge from Chapter 11 (this

spring or summer), United will argue more and more fervently that the § 1113 process cannot be redone because it will interfere with their ability to reorganize on schedule.

United's arguments regarding In re Johns-Manville Corp., 824 F.2d 176, 179-80 (2d Cir. 1987) and Mirant Americas Energy Marketing, Inc. v. OCUC of Enron, Inc., 2003 WL 22327118 (S.D.N.Y. 2003) are way off the mark. The common shareholders in Johns-Manville and the trading creditors in Mirant were not only adequately represented by committees protecting their interests, they also had the right, as individual creditors, to participate fully in any bankruptcy proceeding affecting their rights. But the common shareholders and trading creditors filed motions seeking new, specially tailored committees to represent narrow and specific creditor interests. The orders denying these motions were not final orders because the movants already had the full opportunity to participate in proceedings affecting their interests.

The retired pilots' problem is quite different. Without an authorized representative, they have no access to § 1113's rights or procedures. Further, it should be noted that even though the Mirant court ruled that the order in question was not final, it nevertheless granted a discretionary appeal stating that it would be inefficient to have the parties proceed under the status quo and await a final order before the district court reviewed the appellant's motion.

B. If The December 14, 2004 Order Is Deemed An Interlocutory Order, The Order Should Be Reviewed Now

United argues that the December 14, 2004 order is an interlocutory order that should not be reviewed. Even if this Court deems the order to be interlocutory, it should still be reviewed now under 28 U.S.C. § 158(a)(3), which permits a district court to exercise jurisdiction over an interlocutory order of a bankruptcy court. *See* Fed. R. Bankr. P. 8001(b) and 8003.

Courts use the three part test set forth in 28 U.S.C. § 1292(b), which governs interlocutory appeals from the district court to the court of appeals, to determine whether the

interlocutory review of a bankruptcy order should be permitted. An interlocutory appeal should be allowed when it: (1) involves a controlling question of law; (2) over which there is substantial ground for difference of opinion; and (3) an immediate appeal from the order may materially advance the ultimate termination of the litigation. See 28 U.S.C. § 1292(b); Horwitz v. Alloy Automotive Co., 957 F.2d 1431, 1435 (7th Cir. 1992). This appeal satisfies the three-prong test.

First, a controlling question of law means a question of law that is "serious to the conduct of the litigation, either practically or legally." Johnson v. Burken, 930 F.2d 1202, 1206 (7th Cir. 1991) (quoting Katz v. Carte Blanche Corp., 496 F.2d 747, 755 (3rd Cir. 1974)). Further, a "question of law" for purposes of 28 U.S.C. 1292(b) "has reference to a question of the meaning of a statutory or constitutional provision, regulation, or common law doctrine..." See Ahrenholz v. Board of Trustees of the Univ. of Ill., 219 F.3d 674, 676 (7th Cir. 2000). This appeal relates to the interpretation of § 1113. See In re Energy Insulation, Inc., 143 B.R. 490, 493 (N.D. Ill. 1992) (interpretation of § 1113 presents a controlling question of law). Whether United's retired pilots are entitled to the appointment an authorized representative, and the other protections afforded by § 1113, is a legal question that is of critical importance to their interests.

As stated in Sokaogon Gaming Enterprise Corp. v. Tushie-Montgomery Assoc., Inc., 86 F.3d 656, 658 (7th Cir. 1996), "[a] question of law may be deemed 'controlling' if its resolution is quite likely to affect the further course of the litigation, even if not certain to do so." The December 14, 2004 order did more than "affect" the course of § 1113 litigation. It prevented United's retired pilots from participating in § 1113 litigation in the first place.

Second, because there is precedent that supports an interpretation of § 1113 that is contrary to the interpretation that led to the December 14, 2004 ruling, the "substantial ground for difference of opinion" prong of the test is satisfied. See In re Beatty, 2002 WL 535316 at *1 (S.D. Ind. Feb. 27, 2002) ("there is a substantial ground for difference of opinion on these issues

as evidenced by the case law support found by defendant and the bankruptcy judge's contrary opinion."); *see also* KPMG Peat Marwick, LLP v. Estate of Nelco, 250 B.R. 74, 79 (E.D. Va. 2000) (the "substantial ground for difference of opinion" criterion is inextricably linked with the "controlling question of law" criterion).

The opinion in In re Century Brass Products, Inc., 795 F.2d 265 (2nd Cir. 1986) directly contradicts the December 14, 2004 ruling. Century Brass filed its Chapter 11 petition and sought to terminate the company's pension plan and modify the medical plan (both plans provided benefits to both active and retired employees). The UAW told Century Brass that it would not consider any § 1113 proposal that would affect the vested retirement rights of Century Brass' retirees because it was not the "authorized representative" for these retirees. Negotiations broke down and Century Brass obtained a § 1113 order from the bankruptcy court terminating the UAW collective bargaining agreement. The UAW appealed.

On appeal, the UAW argued that it had "good cause" to reject Century Brass' § 1113 proposals because the company failed to limit its proposals to matters related to active employees' benefits. The union argued that, because Century Brass and UAW had no right to negotiate over the vested retiree benefits, Century Brass could not insist that the UAW bargain over those benefits. The Second Circuit agreed and reversed the § 1113 order.

The Second Circuit's relied heavily on Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157, 92 S. Ct. 383 (1971), where the Supreme Court held that an employer may negotiate directly with its retirees over the modification of their vested retirement benefits without violating labor laws. The Court observed that unions should not be forced to represent retirees in negotiations because representing both active employees and retirees can "create the potential for severe internal conflicts" and create the risk that "union representatives may see fit to bargain for improved wages or other conditions favoring active employees at the

expense of retirees' benefits." Pittsburgh Plate Glass, 404 U.S. at 173, 92 S. Ct. at 394. The Court also held that "[u]nder established contract principles, vested retirement rights may not be altered without the pensioner's consent." Id., 404 U.S. at 182 n. 20, 92 S. Ct. at 399 n. 20.

The Century Brass court held that, in order to promote the policies of flexibility and equity built into the Bankruptcy Code, retirees should be deemed to be "employees" for purposes of applying § 1113. Century Brass, 795 F.2d at 274-75. The court held that "if retiree benefits are subjects of bargaining between the union and the employer, and no modification can occur absent the retirees' consent, those retirees must be represented in the negotiations." Id. at 274. The court also observed that, because it "may not always be appropriate for a union to represent both active and retired workers in modification negotiations," when a conflict between active and retired employees exists, or when the union will not represent its retirees, "a representative for the class of retirees should be appointed by the bankruptcy judge" so that the retired employees will have a bargaining agent throughout the § 1113 proceedings. Id. at 275. According to the court, retirees should be represented during any negotiation regarding the termination or modification of their vested, retirement benefits, even if the employer is a Chapter 11 debtor.

The court held that Century Brass failed to satisfy the requirements of § 1113 because it "failed to meet its threshold burden of negotiating with a representative of the company's retired employees" and the court remanded the case "with instructions to the bankruptcy court to appoint a representative for the retired employees of the debtor, and for such further proceedings under § 1113 as are appropriate." Id. at 275-76 On December 14, 2004, the bankruptcy court here committed the same error by failing to appoint an authorized representative for United's retired pilots to negotiate regarding proposed changes to the Pilot Plan.

The December 14, 2004 ruling is also contrary to In re Unimet Corp., 842 F.2d 876 (6th Cir. 1988), which held that § 1113 protections apply to retiree benefits. The Unimet court stated

that its “reading of 11 U.S.C. § 1113 leads us to the conclusion that Congress intended to give broad protection to collectively bargained for rights which are threatened by a corporate reorganization under Chapter 11...” Unimet, 842 F.2d at 885. The Unimet court identified numerous statements from the legislative history of § 1113 which indicate that when Congress enacted § 1113, it intended to protect the collectively-bargained pension rights of both workers and retirees. The court concluded: “[b]y requiring the debtor-in-possession to establish that the equities militate in favor of rejection of the benefits collectively bargained for on behalf of retirees, we believe we strike the appropriate balance between the interests of the debtor-in-possession in effectuating a reorganization and the interests of the retirees who have achieved through the collective bargaining process some measure of security.” Id. at 876-878.

In addition, the bankruptcy court’s ruling that United’s retired pilots are not entitled to § 1113 protection is in conflict with the Supreme Court’s instruction that courts should take labor law policy into account when interpreting the Bankruptcy Code and should not adopt standards that are “fundamentally at odds with the policies of flexibility and equity built into Chapter 11...” National Labor Relations Board v. Bildisco and Bildisco, 465 U.S. 513, 524, 104 S. Ct. 1188, 1196 (1984). The December 14, 2004 order failed to interpret § 1113 in a flexible, equitable manner that is consistent with principles of labor law and the rights of United’s retired pilots, because equitable considerations would have compelled court to appoint an authorized representative to represent the retired pilots’ pension rights.

Third, immediate appellate review of an interlocutory order must “materially advance the ultimate termination of the litigation.” See Bertoli v. D’Avella, 58 B.R. 992, 995 (D.N.J. 1986) *aff’d* 812 F.2d 136 (3rd Cir. 1987). Deciding this appeal now will facilitate an expeditious resolution of issues related to the § 1113 process and United’s defined benefit plans, which are primary issues in United’s Chapter 11 proceedings. Retirees should not be required to wait for

their pension benefits to be taken away by a debtor and their former union before they can appeal an order denying them the basic right to defend their interests. If the December 14, 2004 order is reversed, and it is decided that the retired pilots had the right to participate in § 1113 negotiations and proceedings regarding the Pilot Plan, any subsequent order entered with respect to the Pilot Plan will have to be reversed as well. As a result, a quick resolution of this appeal will minimize any potential setback in United's alleged timetable for exiting bankruptcy.

Cases cited by United fail to support its argument that URPBPA's appeal is premature. See In re Huff, 61 B.R. 678, 681-83 (N.D.Ill. 1986) (amicus curiae who never sought intervention not permitted to appeal order that was entered "without prejudice" and that did not bind appellant's interests); Citibank v. Telesphere Communications, Inc., 1992 WL 135861, * 5 (N.D. Ill. 1992) (interlocutory appeal of § 506(c) order denied where "[d]elaying the appeal will not harm Lenders since they have not been ordered to do anything as of yet" and secured creditors' collateral had not been impaired); In re Pullman Constr. Indus., Inc., 143 B.R. 497 (N.D. Ill. 1992) (order denying motion to dismiss preference action not immediately appealable); BA Leasing, 2003 WL 22176068 at *5 (interlocutory appeal not permitted regarding order to seal records when appellants' interests adequately protected). These decisions, which held that immediate appeals were not necessary to prevent appellants from harm or to save time and expense, are distinguishable. None of these cases dealt with a situation where an appellant had been denied the right to participate in proceedings that affected its interests.

C. The Enactment of Section 1114 Has No Effect Upon The Rights Of Retirees To Protect Vested Pension Rights Under Section 1113

The Century Brass and Unimet holdings that § 1113 should be interpreted broadly to protect collectively-bargained rights have not been reversed or undermined by subsequent Congressional changes to the Bankruptcy Code. The Retiree Benefits Bankruptcy Protection Act

of 1988, which added § 1114 to the Code, was specifically enacted to protect retiree medical benefits in response to the public outcry after LTV Steel Co., Inc. unilaterally terminated the retiree medical benefits of its 78,000 former employees. See In re Chateaugay Corp., 64 B.R. 990 (Bankr.S.D.N.Y 1986) (summarizing the facts surrounding the LTV bankruptcy). The very idea that a debtor may have been able to unilaterally terminate the health insurance benefits of its retirees caused Congress to act immediately, passing temporary legislation, Public Law 99-591, to prevent the termination of LTV's retiree health benefits. This temporary legislation then led to the enactment of 11 U.S.C. § 1114.

When Congress enacted § 1114, it sought to stop employers from unilaterally terminating collectively-bargained and non collectively-bargained retiree health benefits. Congress did not seek to prevent Courts from using § 1113 to prevent employers from unilaterally terminating collectively-bargained, vested pension benefits. The Unimet court stated that the legislative activity that took place *before* or *after* Public Law 99-591 was enacted demonstrates that Congress did not intend to limit the protections previously available to retirees under § 1113. Neither Adventure Resources v. Holland, 137 F.3d 786 (4th Cir. 1998) nor S. Rep. No. 100-1119 support any other conclusion. United's contrary arguments go to the merits of URPBPA's appeal, not its right to appeal, and will be further addressed in URPBPA's appellate brief.

**D. The December 14, 2004 Order Has, In Fact,
Prevented United's Retired Pilots From Participating In
The Section 1113 Negotiations and Other Proceedings**

United's retired pilots do not have an authorized representative, they did not receive a § 1113 proposal or information to support a proposal, they were excluded from all negotiations regarding the Pilot Plan, they were denied access to the proposals exchanged between United and ALPA with respect to the Pilot Plan and they have been denied the right to prevent ALPA and United from bargaining away their pension rights. United's retired pilots have no ability to force

United to prove that the termination of the Pilot Plan is, in fact, “necessary to permit the reorganization of the debtor” under § 1113(b)(1)(A) and (c)(1). Yet United argues that URPBPA’s “ability to participate in the Section 1113 process...is not affected by the Bankruptcy Court Order...[and] none of URPBPA’s substantive rights were affected by the Court’s ruling.”

If United truly believed this argument, neither ALPA nor United would be fighting so vigorously to prevent URPBPA from pursuing this appeal. If the December 14, 2004 is not promptly reversed, the order will prevent the retired pilots from participating in § 1113 negotiations and it will lead to the implementation of Letter Agreement 05-01 and the termination of the Pilot Plan.

United suggests that the retired pilots are not prejudiced by the December 14, 2004 order because they will have the right to participate in any ERISA distress termination proceeding that takes place. But this argument fails to take into account that (1) the Pilot Plan provides the retired pilots with “tax-qualified” and “non tax-qualified” pension benefits and (2) § 1113 provides retirees with protections that are not available under ERISA. United and the Pension Benefits Guarantee Corporation take the position that the retired pilots’ non tax-qualified pension benefits are not protected by Title IV of ERISA and the distress termination provisions set forth at 29 U.S.C. § 1341(c). But the non tax-qualified pension benefits that the retired pilots earned (providing a substantial percentage of pension benefits for many retired pilots) are contractually vested (thus, protected by § 1113), even if they are not protected under ERISA. Denying the non-qualified pension benefits protection under § 1113 could effectively give ALPA and United free reign to terminate these benefits without giving retired pilots any “due process” rights.

United argues that the retired pilots’ exclusion from the § 1113 process is justified because § 1113 uses the word “employees,” which United asserts excludes retirees from participating in § 1113 proceedings. This argument was rejected by Century Brass and Unimet

and United has failed to cite a single case supporting it. Further, United's interpretation of § 1113 leads to arbitrary results because all of United's unions except ALPA are defending their retirees during United's § 1113 proceedings. It is unfair to interpret § 1113 in a way that protects only retirees who are represented by their unions.

E. United's Two Remaining Arguments Lack Merit

First, United's argument that URPBPA sought to be appointed as an "official committee" solely in order to seek compensation from the Debtors' estate is underhanded and unfair. URPBPA sought the appointment of an authorized representative to ensure that United's retired pilots' pension rights are fully protected (while URPBPA, or individual members of its board, are willing to serve, there is no guarantee they would be selected). If an authorized representative is not appointed, United's retirees will not receive any of § 1113's protections.

Second, despite United's suggestion to the contrary, IFS and the retired pilots do not have the same rights. IFS is a trustee appointed to enforce United's obligation to make funding contributions to United's four defined benefit plans. It has no standing to enforce contractually-vested pension rights. IFS is not a beneficiary of the Pilot Plan and it does not have collectively-bargained rights that will be affected if the Pilot Plan is terminated. Because § 1113 gives retirees protections to prevent a debtors' unilateral termination of their collectively-bargained rights, United's retired pilots are entitled to fully participate in § 1113, but IFS is not.

III. Reply To Arguments Raised By ALPA

ALPA argues that because it is the union for active pilots, United is only required to negotiate with ALPA regarding any proposed collective bargaining agreement modifications and "[t]he fact that the bargaining process may affect unrepresented individuals does not give those individuals the right to interfere with that process." ALPA's cases do not support its arguments.

In Elgin, Joliet and Eastern Ry. Co. v. Brotherhood of Railroad Trainmen, 203 F.2d 540, 544 (7th Cir. 1962), a case where a union threatened to strike in order to protect the pension rights of retired employees, the court stated that it did not reach the issue regarding whether unions are permitted to “lawfully strike for increased non-contributory pensions for retired persons.” Frankly, it is difficult to see how this case supports ALPA’s arguments. ALPA doesn’t represent retired pilots and, thus, has no right to bargain regarding their benefits¹. While the case is not relevant to URPBPA’s appellate rights, it certainly contrasts the behavior of most unions, which seek to protect their retirees, with the behavior of ALPA.

Next, ALPA cites Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515, 57 S.Ct. 592 (1937) to support its argument that United may only negotiate with ALPA. Virginian Ry. held that a railroad that attempts to impose a company union and refuses to negotiate with the union duly selected by its employees violates the Railway Labor Act (the “RLA”). This case has no relevance here. URPBPA admits that ALPA has the exclusive right to negotiate with United regarding pay, benefits, working conditions, work rules or any other matters of concern that relate exclusively to United’s active employees. But ALPA and United can not negotiate away, behind closed doors, the contractually-vested pension rights of United’s retired pilots any more than ALPA and United can enter into negotiations to take away benefits from United’s mechanics, flight attendants or other employees who are not represented by ALPA.

In International Assoc. of Machinists v. Northwest Airlines, 536 F.2d 975 (1st Cir. 1976) the IAM alleged that Northeast and Delta Air Lines violated the RLA by refusing to bargain. The court held that neither defendant had an obligation to bargain with the IAM because it was

¹ See In re Ionosphere Clubs, Inc., 134 B.R. 515, 520 (S.D.N.Y. 1991) (“ALPA, the bargaining unit, cannot negotiate retiree benefits after electing not to represent the pilot retirees under § 1114. Once ALPA opted out of retiree representation, its ability to do so was extinguished.”)

not clear, after the merger of the two carriers, whether the IAM represented the majority of any craft or class of employees. It is difficult to see how this case relates to URPBPA's appeal.

Although ALPA cites Pittsburgh Plate Glass (discussed above), this case supports URPBPA's right to appeal. The Supreme Court held that if an employer and retiree choose to negotiate privately regarding the retiree's benefits, the union can not interfere. The Court stated:

[u]nder established contract principals, vested retirement benefits may not be altered without the pensioner's consent. The retiree, moreover, would have a federal remedy under s 301 of the Labor Management Relations Act for breach of contract if his benefits were unilaterally changed.

Pittsburgh Plate Glass, 404 U.S. at 182 n. 20, 92 S. Ct. at 399 n. 20. Century Brass relied on Pittsburg Plate Glass in holding that, whenever an employer in Chapter 11 seeks to modify vested retirement benefits, the retirees who are entitled to receive those benefits must be represented by a union or an authorized representative appointed pursuant to § 1113. Employers are simply not allowed, inside or outside of bankruptcy, to unilaterally modify or terminate the vested retirement benefits of its retirees. Employers must bargain with their retirees first.

ALPA's argument, that it should be able to negotiate away the vested pension rights of United's retired pilots without interference from the retired pilots, is inconsistent with the law and common notions of fairness.

WHEREFORE, the appellants request that this Court confirm that the December 14, 2004 order is final and appealable or, in the alternative, grant their Alternative Motion for Leave to Appeal the December 14, 2004 order.

Date: January 28, 2005

UNITED RETIRED PILOTS BENEFIT
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CERTAIN INDIVIDUAL RETIRED
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