



March 5, 2010

RE: CHAOS™: A legal analysis

Dear AFA-CWA Member:

Our Union, the Association of Flight Attendants (“AFA”), employs a myriad of Contract Campaign actions that includes a negotiation support strategy known as “CHAOS™.” It was first used during AFA’s strike against Alaska Airlines, Inc. (“Alaska”) in 1993 in Seattle. Because Alaska was prepared to permanently replace Flight Attendants in the event AFA went on a mass walkout, AFA created a strategy of intermittent strikes called CHAOS. Under this strategy, a few Alaska Flight Attendants would arrive for their assigned flight and proceed to the gate area. Before passengers boarded, the Flight Attendants would announce to the gate agent that they were now on strike. They would leave the gate area. Then, about one half-hour later, they would return and announce their unconditional offer to return to work. Alaska refused their offer and instead took their ID badges and either held them out of service or suspended them indefinitely. After these intermittent strikes continued, Alaska threatened to discharge the next group of Flight Attendants who engaged in an intermittent strike.

AFA filed suit against Alaska seeking to enjoin the company from disciplining or discharging Flight Attendants for striking. Alaska argued to the Court that intermittent strikes are “unprotected” under the Railway Labor Act (“RLA”), and therefore the Flight Attendants could be disciplined and even fired for engaging in intermittent strikes. AFA argued that such strike activity is not prohibited by the RLA and is therefore legal.

The federal district court ruled in AFA’s favor, finding that based on the decision in *Pan American Airways v. International Brotherhood of Teamsters*, 894 F.2d 36 (2d Cir. 1990), the RLA, unlike the National Labor Relations Act, does not prohibit the use of intermittent strikes as a legitimate strike activity. Therefore, the court declined to declare intermittent strikes as unprotected under the RLA. *AFA v. Alaska Airlines, Inc.*, 847 F. Supp. 832 (W.D. Wash 1993). Accordingly, the court ordered the reinstatement with back pay of all Flight Attendants who were held out of service or suspended indefinitely. Furthermore, the court enjoined Alaska from disciplining or discharging any Flight Attendants who engaged in future intermittent strike activity. AFA and Alaska reached agreement on a new contract within two weeks of the court’s ruling.

The district court’s decision in *AFA v. Alaska Airlines* is consistent with the Supreme Court’s finding in several cases that the RLA does not define the scope of union self-help in the period following a 30-day cooling-off period. Indeed, in recognizing the broader scope of permissible self-help available to the parties, the Supreme Court has stated that “the availability of such self-help measures as secondary picketing may increase the effectiveness of the RLA in settling major disputes by creating incentive for the parties to settle prior to exhaustion of the statutory procedures.” *Burlington Northern R. Co. v. Brotherhood of Maintenance of Way Employees*, 481 U.S. 429, 452 (1987) see also, *Trainmen v. Jacksonville Terminal Co.*, 394 U. 369, 378-79 (1969).

All Flight Attendants on the Flight Attendant System Seniority List enjoy the same protections. United Airlines (“UAL”) expressly states that Flight Attendants perform their duties on U.S. flag aircraft over domestic and international air routes. Furthermore, CHAOS is in response to collective bargaining negotiations taking place under U.S. laws. Accordingly, CHAOS, which is lawful under U.S. labor laws and the RLA, applies to all UAL Flight Attendants based at both domestic and international domiciles.

Since 1993, when CHAOS was initiated, AFA has not struck one flight but has reached agreement on a new collective bargaining agreement at every carrier where a CHAOS campaign was used. Because of its effectiveness, the CHAOS intermittent strike strategy has actually encouraged airlines to reach agreement with AFA rather than to withstand a strike. In that respect, the strategy has promoted negotiations, which is, after all, the overriding purpose of the RLA. Should United management choose to test Flight Attendants’ promise to do Whatever It Takes to achieve an industry leading contract, then Flight Attendants will exercise our legal right to strike with CHAOS.

Sincerely,

Edward J. Gilmartin
AFA-CWA General Counsel