

BEFORE THE AMERICAN AIRLINES TWU-IAM SYSTEM

BOARD OF ADJUSTMENT

IN THE MATTER OF )  
ARBITRATION BETWEEN: )  
 )  
 )  
TWU-IAM ASSOCIATION, )  
 )  
Claimants, )  
 )  
-vs- )  
 )  
 )  
AMERICAN AIRLINES )  
(ATTENDANCE GUIDELINES) )  
 )  
Respondents. )

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DATE: December 14, 2022  
TIME: 10:50 a.m.

VOL. II

Arbitration in the above-entitled  
matter, held remotely via Zoom videoconferencing,  
transcribed by Alyssa A. Repsik, a Notary Public  
for the Commonwealth of Pennsylvania, held before  
BONNIE WEINSTOCK, Arbitrator.

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1 P R O C E E D I N G S

2 ARBITRATOR WEINSTOCK: Good

3 morning, everyone. I'm Bonnie Siber Weinstock,  
4 and I'm the neutral chair of this System Board  
5 of Adjustment. And we are here -- we are  
6 commencing the second day of hearings in the  
7 matter brought by the TWU IAM Association  
8 against American Airlines pertaining to an  
9 attendance policy.

10 At our last day -- pardon me, seated  
11 with me on the board are the Company's  
12 designee, Jonathan Oliff, and the Union's  
13 designee, Sean Ryan. At our last day of  
14 hearing we had commenced and were in the midst  
15 of the Union's direct case, and in a moment, it  
16 is my understanding the Union will be calling  
17 Gary Peterson as the next witness.

18 Before going on the record this  
19 morning, the parties were in caucuses and it's  
20 my understanding that a stipulation about some  
21 matter has been reached.

22 So, Ms. Gornail, did you want to put  
23 that on the record at this time?

24 MS. GORNAIL: Yes. Thank you.  
25 The stipulation is as follows:

1           The parties stipulate that:  
2           Pursuant to article 15(c), of the M&R, MCT, and  
3           MLS CBAs, the Company's attendance control  
4           policies references to quote, 'shift swap,'  
5           unquote, in Rows 1, 2, and 4 of the table  
6           illustrating quote, 'Points assessment for  
7           occurrence,' unquote, do not apply to employees  
8           in M&R, MCT, and MLS work groups when they  
9           failed to report, or were tardy to work but do  
10          not call in sick.

11                 "The Company's Attendance Control  
12          Policy will apply to employees in the M&R, MCT,  
13          and MLS work groups who call in sick for a  
14          shift swap and the restriction to article 15(c)  
15          will not apply."

16                 That's the stipulation. I can also  
17          E-mail it to the court reporter and to the  
18          Board.

19                         ARBITRATOR WEINSTOCK: I would  
20          appreciate that. Thank you.

21                         MS. GORNAIL: Okay. I'll do  
22          that after -- on a break.

23                         ARBITRATOR WEINSTOCK: And,  
24          Ms. Joshi, is that stipulation acceptable to  
25          the Company?

1 MS. JOSHI: It is. Thank you.

2 ARBITRATOR WEINSTOCK: Thank  
3 you. The Board will take that as a  
4 stipulation.

5 And now, is the Union ready to call  
6 Gary Peterson as the next witness?

7 MS. GORNAIL: Yes.

8 ARBITRATOR WEINSTOCK: Thank  
9 you.

10 Mr. Peterson, all the witnesses who  
11 have testified in this proceeding have been  
12 sworn or affirmed, so if you'll please raise  
13 your right hand? Thank you.

14 GARY PETERSON, a witness herein,  
15 having been first duly sworn, was  
16 examined and testified as follows:

17 ARBITRATOR WEINSTOCK: Now,  
18 Mr. Peterson, it's my understanding that you've  
19 been provided with a binder of exhibits?

20 THE WITNESS: Correct, yes.

21 ARBITRATOR WEINSTOCK: And  
22 they are in front of you?

23 THE WITNESS: Yes.

24 ARBITRATOR WEINSTOCK: All  
25 right. Is there anything else that's in front

1 of you, around you, by way of documents  
2 relevant to this case?

3 THE WITNESS: No.

4 ARBITRATOR WEINSTOCK: All  
5 right. Please don't refer to anything until  
6 you're directed to do so.

7 THE WITNESS: Okay.

8 ARBITRATOR WEINSTOCK: Okay.

9 Ms. Gornail, whenever you're ready.

10 DIRECT EXAMINATION

11 BY MS. GORNAIL:

12 Q. Okay. Can you -- is it okay if I  
13 call you Gary?

14 A. Yes.

15 Q. Okay. Can you please give us your  
16 background?

17 A. Yeah. I'm an aircraft mechanic at  
18 American Airlines by trade. I started in 1990  
19 as a stock clerk, and transferred to aircraft  
20 maintenance in 1992, and then I'm employed with  
21 the carrier from that time forward.

22 Current position, I'm the executive  
23 director to the international president for  
24 Transport Workers Union. Previously, I was the  
25 president of three maintenance and related



1        locals, and additionally then including TA.

2                Prior to that, I was a chairman of  
3 maintenance in Chicago.

4            Q.        Okay. So just to clarify, you were  
5 -- you're from the Legacy American Airlines'  
6 side?

7            A.        Yes. Legacy American side, and the  
8 local president on both the base maintenance  
9 and line maintenance sides of the agreements.

10          Q.        Okay. And you -- can you provide me  
11 with your educational background?

12          A.        Yeah. I have a master's degree from  
13 Southern Methodist University in dispute  
14 resolution. I have a bachelor's degree, as  
15 well, in business finance.

16          Q.        Now, during the negotiations of the  
17 JCBAs at issue, what was your role within the  
18 TWU at that time?

19          A.        My initial role was as part of the  
20 negotiating team, and I remained in that  
21 capacity throughout the entirety of  
22 negotiations along the way. However, my  
23 position within the Union has changed.

24                So my role significantly changed  
25 from being just a part of the negotiating team

1 to a part of the physical negotiating team to,  
2 ultimately, the lead spokesman on the  
3 maintenance and related MLS side of the  
4 negotiations for TWU, along with my  
5 counterparts from the IRM.

6 Q. Now, in your -- was that the first  
7 round of negotiations -- was what the first  
8 time you ever negotiated a collective  
9 bargaining agreement?

10 A. No. I've been involved in  
11 negotiations at American since the 2001  
12 collective bargain agreements forward, and I  
13 also participated in the background, to some  
14 extent, in the 1985 -- the tail end of that.

15 Q. Okay. And do you participate in  
16 negotiations for any other -- other than  
17 American Airlines, for any other collective  
18 bargaining agreements with other employers?

19 A. Yeah, it's -- obviously TW  
20 represents multiple carriers, as well as  
21 multiple industries. So I'm involved in or  
22 have been involved in 20, or so, airline  
23 agreements.

24 I guess the key agreements, you  
25 know, in theory, would be Envoy, American,

1 Southwest, Alaska, UPS, Hawaiian.

2 I mean there's several of them. I  
3 don't want to go through the whole list, but  
4 from regional to main line to cargo, you know.

5 Q. On the American -- with respect to  
6 American negotiations, have you ever been  
7 involved in any concessionary negotiations or  
8 bankruptcy negotiations?

9 A. Yeah. Both in 2003, and then --  
10 well, 2003 for concessionary bargaining, and  
11 then 2012, I believe it was the beginning of  
12 the bankruptcy throughout that as well.

13 Can you guys hear me okay?

14 I just want to make sure.

15 Q. I can hear you perfectly.

16 A. Just want to make sure.

17 Q. Okay. So the -- can you give us  
18 just the -- how did the JCBA negotiations come  
19 to be?

20 Like, what led to JCBA negotiations?

21 A. Sure. So, in the latter part of the  
22 bankruptcy of American Airlines, there was  
23 obviously -- I don't want to say -- a merger  
24 would probably be the best word. I don't want  
25 to say takeover, but a merger discussion that

1 took place between the leadership of US Airways  
2 and the unions on the property there to get  
3 behind support for a US Airways/American  
4 Airlines merger.

5 I was part of those discussions as  
6 part of the TWU's side of the unions. We  
7 supported -- the TWU did, we supported the  
8 merger with, I guess, what I would say, you  
9 know, confidence in the incoming leadership:  
10 Dun Parker, Edward Aison, David Seymour, and  
11 their team mainly on my -- and my role on how  
12 the merger would benefit the workers, both in  
13 IAM and TWU, by becoming the world's largest  
14 carrier.

15 Q. Okay. And so, when you went into  
16 those JCBA negotiations did that -- how did  
17 that impact the context of -- of negotiations?

18 A. Sure. So obviously, speaking from  
19 the TWU American Airlines' side, we were coming  
20 out of arguably, probably, one of the largest  
21 bankruptcies in the airline industry's history.

22 So coming out of that, we were  
23 looking at it from, you know -- and obviously  
24 US Airways had had their bankruptcies as well  
25 -- so from the Union's perspective, both TWU

1 and IAM, we looked at how we would negotiate  
2 with the carrier, we looked at the agreements  
3 we had in place, as well as other carriers'  
4 agreements.

5 We made no bones about our approach  
6 would be to have the best contract in the  
7 industry. This was the world's largest carrier  
8 combined.

9 The Company, in fairness to them,  
10 gave many assurances that while they might not  
11 always agree, they would -- they would listen  
12 and they would be respectful of our positions  
13 and they would bargain to what ultimately was  
14 the best, and is still the best, contract in  
15 the industry.

16 So for that, you know, both sides  
17 did their due diligence and it was a four-year  
18 negotiation to get to the right thing.

19 Q. You just answered my next question  
20 which will be: How long did negotiations take?

21 So, you said four years.

22 Now, let's specifically talk about  
23 the sick leave article, which is Article 24.

24 So if you go to Union Exhibit 15 in  
25 your binder?

1           A.     Okay.

2           Q.     And this is already entered into the  
3 record, so we already went over those proposals  
4 from the maintenance side up to 58.

5                     So are you there at 15?

6           A.     Yes.   Yes.

7           Q.     Do you -- do you recall about how  
8 long was spent negotiating Article 24?

9           A.     Yeah.   So 24, I want to say, the  
10 article, in totality, surprisingly was short.  
11 I think there were roughly, you know, five  
12 passes back and forth between the Company and  
13 the Union for this particular article.

14                     I think it took, you know, roughly a  
15 month to negotiate for an article this  
16 important. I think that would be categorized  
17 as impressively done in short on both sides'  
18 account.

19           Q.     Okay.   Was that typical that you  
20 would resolve articles so quickly?

21           A.     Not really, and I think anybody that  
22 negotiates knows, you know -- and this is  
23 collective bargaining, kind of, the old style  
24 way of article by article.

25                     You know, too long in the two

1 legacies carriers, a lot of history, a lot of  
2 dialogue around the nuances between how Legacy  
3 US did things, how Legacy American did things;  
4 however, in this particular case, it did come  
5 together, you know, I would arguably say rather  
6 quickly.

7 Q. And just to recap for -- I know this  
8 may have been testified during the first day,  
9 but it's been a while.

10 So how -- there were maintenance,  
11 there are M&R rooms, like maintenance and  
12 related and all those JCBA's and Fleet. There  
13 was a separate fleet negotiation.

14 Which room were you in?

15 A. Well, for purposes of this, it would  
16 have been the maintenance and related room.  
17 Ultimately at the end, I believe I'm a  
18 signatory on the final fleet agreement.

19 The final language on that, that  
20 came later than the maintenance in the final  
21 language, came later and I was -- as I moved  
22 through positions, ultimately, I was a part of  
23 the signatory page on that.

24 Q. Okay. So in the maintenance room,  
25 how many for the negotiating committee?

1           Because I understand there was IAM TWU was a  
2           part of the Association.

3                         How many -- how many individuals  
4           were in the room for each side of the  
5           Association?

6                         A.       Yes, ma'am.   So the committee itself  
7           was six and six and then we would obviously  
8           have, in some cases, experts, so to speak,  
9           economists or attorneys and then I would add on  
10          a couple of the lead negotiators.   So, you  
11          know, 12 to 15 on any given day, roughly.

12                        But from the teams themselves, the  
13          negotiating team, it was six and six.

14                        ARBITRATOR WEINSTOCK:   Excuse  
15          me.   May I just have a clarification,  
16          Ms. Gornail?

17                        MS. GORNAIL:    Yes.

18                        ARBITRATOR WEINSTOCK:  
19          Mr. Peterson, are you saying six in total for  
20          the Union from all the member agencies or six  
21          from each of the unions?

22                        THE WITNESS:   Six from IAM.  
23          Six from TWU were the negotiating committee  
24          teams.   And then the ancillary folks that were  
25          assisting along the way.



1 ARBITRATOR WEINSTOCK: Thank  
2 you.

3 BY MS. GORNAIL:

4 Q. Okay. So we heard previously about  
5 the 1969 Legacy American attendance policy.

6 Can you just give us an overview of  
7 what -- how attendance worked previously before  
8 this JCBA?

9 A. Yeah. So that's the Legacy American  
10 Airlines policy. I'm proud to say it predates  
11 me. 1969, I was not there, so I -- I learned  
12 and inherited that over my tenure, so to speak,  
13 from 1995 forward.

14 The policy was restrictive, I would  
15 say, on the Company, obviously,  
16 long-in-the-tooth. The one thing I would say  
17 is that I hope this is -- you know, comes  
18 across right, is, you could be disciplined  
19 under that policy but the process for  
20 discipline was a bit different than a point  
21 system type of thing.

22 Q. Okay. And, generally, how is  
23 legitimate sick leave treated under the Legacy  
24 American policy for maintenance?

25 A. Yeah. So, again, legitimate sick

1 leave is no different than what we, you know,  
2 negotiated, and I think what we already  
3 proposed and agreed to was anyone that uses  
4 legitimate sick leave for legitimate purposes,  
5 intended being sick, no penalty, you know,  
6 no-fault -- no-fault.

7 That would be my perspective of it.

8 Q. Okay. And let's go to Union Exhibit  
9 15 since we're already there for the first  
10 proposal that went, I believe you said passed  
11 it begins on Union 15 and it goes from Exhibit  
12 Page 1 to 2.

13 A. Okay.

14 Q. So I'm going to direct you to G --  
15 to paragraphs G and H.

16 A. Okay.

17 Q. So do you know which color  
18 represents former Legacy US language and which  
19 color represents former Legacy American  
20 Airlines' language?

21 A. Yeah. So the red, red language is  
22 the Legacy IAM language, US Airways. The blue  
23 is Legacy TWU American Airlines' language and  
24 then the black is new at -- was in -- in either  
25 or from someplace else.

1 Q. Okay. Did you have a note taker at  
2 the table on the Union side?

3 A. Yeah. We had three in the M&R room.  
4 That would be Mike Bush, Mark Huffman and Tony  
5 McCoy.

6 Q. Were those members of the  
7 negotiating committee?

8 A. Mike Bush and Mark Huffman were both  
9 members of the negotiating committee. Tony was  
10 an international staff rep, so he would be in  
11 addition to the 12.

12 (Reporter asked for  
13 clarification on audio.)

14 ARBITRATOR WEINSTOCK: Let's  
15 go back on the record.

16 BY MS. GORNAIL:

17 Q. So you were describing the note  
18 takers, so that was Mike Bush, Mark Huffman and  
19 Tony McCoy who you said was an international  
20 staff rep.

21 Okay. So ultimately we know that --  
22 so the Legacy -- you said the blue language in  
23 section H in the proposal was Legacy TWU,  
24 Legacy American Airlines' language?

25 A. Correct.

1 Q. Do you recall discussions at the  
2 table, and this is throughout the sessions,  
3 about the sick -- about the use of sick leave  
4 and discipline, so specifically G and H that  
5 we're talking about here?

6 A. Yeah. I mean, obviously, as I said  
7 earlier, you know, the article moved fast. And  
8 when I say "fast," I think that was because of  
9 the language and conversation not only at the  
10 table but, you know, how it was presented or  
11 articulated.

12 So I guess the answer to that is  
13 both agreements had sick benefits, sick day  
14 benefits, sick leave benefits and both capture  
15 the legitimate use of sick time, which is, you  
16 know, if you called out sick and you're sick,  
17 you won't be penalized.

18 Q. Okay. But my question -- so then my  
19 question was: Do you recall discussions at the  
20 table regarding these provisions?

21 A. Yeah. I mean, yeah, there was  
22 several discussions. I think one of the key --  
23 key statements at least, you know, from my  
24 vantage point, that, as we moved forward in  
25 progression, you know, there -- and it's in

1 the notes, but I want to say it's maybe the  
2 second or third, I think it's 415 of 16, Jim  
3 Weel made a statement -- Jim Weel was with  
4 Legacy American, who I've worked with for  
5 years -- Jim made a statement: If you  
6 legitimately use sick time, we should not be  
7 disciplining you, something to that effect.

8 So that fell in line with the  
9 historical application of how we applied the  
10 language on American.

11 Q. Okay. Do you recall any discussions  
12 from the Union side about the importance of  
13 these provisions?

14 A. Yeah. So in that case, Tom Regan  
15 would have been the lead spokesperson and from  
16 the Union's perspective, it was -- I want to  
17 classify this right.

18 I wouldn't say it was one of our  
19 biggest fights but it was a fight over the  
20 utilization of sick time that we're bargaining  
21 for sick time for people to use it for its  
22 intended purpose. We wrote language in that  
23 supports that.

24 And Tom was adamant about -- that --  
25 you know, we are not going to have a penalty,

1 assess the people that use their sick time for  
2 legitimate reasons.

3 You know, again, this is one of  
4 those areas where the Company agreed to  
5 language on bona fide use of sick time,  
6 legitimate use of sick time and obviously  
7 that's one of the key drivers of why we believe  
8 we're here today, is that the system today is a  
9 "will" system, at least the policy. I  
10 shouldn't say "the system."

11 The policy, as written, is a "will"  
12 system. The Company "will" do this if you call  
13 in sick; the Company "will" do that if you call  
14 in sick. Not a, the Company "may" do this or  
15 "may" do that system, which is what both Legacy  
16 carriers had previously.

17 I think there's a key component and  
18 I'll step ahead. I don't know your line of  
19 questions on this.

20 Q. Hold on one second. Let me ask you  
21 a few background questions. You mentioned a  
22 few people, so -- and we talked about who was  
23 on the Union side.

24 You mentioned Jim Weel. What was  
25 Jim Weel's role, to your recollection?

1           A.     Yes.  He's the managing director  
2     from American Airlines from the TWU side and  
3     then ultimately, you know, when the merger  
4     happened, Jim was over the IAM as well for  
5     maintenance and related.

6           Q.     Okay.  And who else -- who was the  
7     Company's chief negotiator?

8           A.     Jerry Glass.

9           Q.     Okay.  Now, you spoke about policy.  
10    Did the parties negotiate the attendance policy  
11    during these -- during these negotiations?

12          A.     No.  And again, just reference other  
13    agreements.  Some agreements do negotiate for  
14    what I would say isn't policy; it's contract  
15    language.  We did some of that involving shift  
16    swaps.  I'll leave that off to the side.

17                    But in this particular agreement, it  
18    was agreed upon that we were not going to  
19    negotiate policy, that we would have a form of  
20    arbitration if there was a disagreement.

21          Q.     Okay.  Now, did you -- did the  
22    Company ever indicate which attendance --  
23    because you had the Legacy US side and the  
24    Legacy American side with different attendance  
25    policies.

1                   Did the Company ever indicate which  
2 policy they would be going to with respect to  
3 attendance?

4           A.       Yeah. I mean, and again, this is --  
5 this is why I would -- I would say this came  
6 together in a relatively quick manner and I  
7 remember this, specifically 4/20 of '16, Jerry  
8 Glass articulated at the table that the Company  
9 would be going to the Legacy US M&R attendance  
10 policy and it was referred to as the David  
11 Seymour policy, which -- which was -- if you --  
12 you know, look at it. It was constructed in  
13 the way, at least in my view, that gave us a  
14 similar set of boundaries to the  
15 long-in-the-tooth American 1969 policy.

16           Q.       Okay. And let me just -- let's go  
17 to Union Exhibit 22.

18           A.       Okay.

19           Q.       So you said Jerry Glass indicated  
20 that the Company would be going to the LU -- to  
21 the -- the Seymour policy?

22           A.       Correct.

23           Q.       Did -- do you recall if the -- if  
24 Jerry ever sent over the policy to -- to the  
25 Union during negotiations?



1           A.     Yeah.  He sent it to Tom Regan and  
2     John Coveny, again, and in fairness to  
3     everybody, this was when I was in a negotiator  
4     role.  I wasn't a lead negotiator, so I believe  
5     at that time John was part of, kind of, keeping  
6     track of our records book for the M&R side and  
7     Tom was lead negotiator, so it made sense for  
8     that to go to those two.

9           Q.     Did you see the policy when it was  
10    sent over during negotiations?

11          A.     Yeah, we -- it was brought into the  
12    room, obviously, based on the statement that  
13    the Company would be going to this -- this type  
14    policy.

15                 We all reviewed it and that's,  
16    obviously, how I believe we got to an agreement  
17    rather quickly; was shortly thereafter that we  
18    reached an agreement, a tentative agreement, I  
19    guess, would be the answer.

20          Q.     Okay.  So let's go to -- so do you  
21    recognize Union Exhibit 22?

22          A.     Yes.

23          Q.     And what is this document?

24          A.     This is the -- what I referred to  
25    earlier as the 2010 Seymour Attendance Control

1 Policy out of Legacy US M&R. That was sent  
2 over from Jerry Glass to Tom Regan and John  
3 Coveny.

4 Q. Okay. Did anything stand out to you  
5 about this policy? You said you reviewed it  
6 and this is what you believed helped you lead  
7 to an agreement. What's --

8 A. Sorry.

9 Q. Were there any provisions -- like,  
10 what specifically stood out to you about this  
11 policy?

12 A. Well, so the -- I mean, the policy  
13 itself, this policy, looking at it, is well  
14 laid out, well formulated. And it's, what I  
15 would argue, 100 percent in line with what we  
16 were used to on the American Airlines' side of  
17 the property.

18 So again, whether some of us  
19 disagreed or agreed on the TWU side, when we  
20 got to the bottom of it and reviewed it, this  
21 type of policy fell very much in line with what  
22 I would argue was our 1969 policy, not exactly  
23 the same, but very similar in nature.

24 Gave us a sense of comfort and,  
25 again, after seeing this and the way it was

1 presented, we went through and -- would  
2 reference Page 7, and 8, probably the most  
3 important part of how the Attendance Control  
4 Policy worked, is what gave us this comfort in  
5 agreeing to the article, at -- shortly  
6 thereafter.

7 Q. Okay. And when you talk about Pages  
8 7, 8, what are you -- because 7, and 8, it  
9 talks about corrective counseling attendance  
10 track, and then attendance control municipal  
11 standard.

12 Is that what you're referring to?

13 A. Right. So again, the numerical  
14 standards, the how you progress through the  
15 steps of -- of what I would argue could be  
16 disciplined, could be, not will be disciplined,  
17 but could be disciplined. It was a "may  
18 process," very specifically.

19 Also, how you go from that -- 100  
20 percent, I would argue similar to the American  
21 program, which was, you would speak to somebody  
22 in management, you would have counseling  
23 sessions, they would tell you where you were at  
24 in this system, you might be disciplined, I'm  
25 -- and counseled and, so to speak, there might

1 be a record, so to speak, that could progress  
2 to discipline, there might not.

3 Again, legitimate use of sick time:  
4 "I had a doctor's note," these are the things  
5 that happened. It would be reviewed by a  
6 person and that's how this process worked in  
7 line with how American's process worked.

8 Q. Did you hear any assurances at the  
9 table about how legitimate sick leave would be  
10 treated?

11 A. Yeah. So again, back to the  
12 statement by Jim Weel, which was very specific  
13 that legitimate use of sick time should not be  
14 used for discipline, and again, that's the  
15 should -- you know, you got to look at it on  
16 its face.

17 Some physical person would value  
18 what you -- your documentation or what you  
19 brought to them as far as utilization of your  
20 sick time, and it was very much a may system  
21 and I would argue a -- a just cause system.

22 Q. Okay. I'm going to take you to  
23 Union Exhibit 15, Exhibit Page 10.

24 A. Give me one second. Okay.

25 Q. Which is the Union's Pass. It says

1 Union Pass V3, April 20th, 2016.

2 A. Okay.

3 Q. So, in this pass, Section G, it  
4 looks like the Legacy US, and the Legacy  
5 American language is still in this -- in this  
6 pass?

7 A. Correct.

8 Q. Okay. Now, ultimately the Union  
9 agreed to take out the Legacy American  
10 language, right, the language that's marked in  
11 blue?

12 A. Yes.

13 Q. So why did the Union do that? Why  
14 did the Union agree to that?

15 MS. JOSHI: I'm just going to  
16 object as to relevance. I think what we need  
17 to be talk about is what was conveyed to the  
18 Company.

19 ARBITRATOR WEINSTOCK: Yes.  
20 And you may take that up on cross if it's not  
21 part of the witness's answer.

22 Go ahead.

23 THE WITNESS: I'm sorry.  
24 Christina, can you repeat the question?

25 BY MS. GORNAIL:

1           Q.     It was why did the Union ultimately  
2     agree to take out the -- the blue language,  
3     that Legacy American language?

4           A.     Yeah.  Prior to this point in the  
5     discussions, again, there were -- there were  
6     conversations about point systems and how  
7     things might work.

8                     This is the conversation right  
9     before we get the E-mail of, we're going to go  
10    to the Legacy US M&R Seymour 2010 agreement --  
11    I'm sorry -- not agreement but attendance  
12    policy.  That's -- that's a significant shift  
13    at the table from where the Company was.

14                    And again, I will speak from the TWU  
15    side, from where we were, to -- for lack of  
16    better terms, move off of our 19 -- this is  
17    imbedding both IAM and TWU language; the blue  
18    and the red.

19                    When that was presented to us and we  
20    were able to look through what that policy was  
21    and how it was described to us as what the  
22    Company was going to, then we moved off of the  
23    1969 language through our internal discussion  
24    of how the process would work, how you would  
25    get from, you know, so to speak, the -- you

1 know, counseling to some sort of discipline.

2 And it was well laid out, well formulated.

3 Q. Do you recall, in discussions at the  
4 table about policy, about how the policy and  
5 the language had been -- or whether there was  
6 an interplay between the policy and the  
7 language?

8 A. Yeah. I mean, absolutely. That's  
9 -- that's the, you know, the nexus of the two  
10 coming together was -- for us, was that whole  
11 document. Prior to the -- that day, that  
12 document and that conversation of, "Here. This  
13 is what it's going to look like," had never  
14 been presented to us. So you take that  
15 document with -- with what ultimately becomes  
16 the language, you marry those two together and  
17 that's why we, I would argue, got to this point  
18 right after that moment in time, because there  
19 was a sense of security in what we were reading  
20 that was being presented to us by the Company's  
21 lead negotiator.

22 Q. Okay. And do you -- I don't know if  
23 you fully answered my -- or you didn't answer  
24 it as clearly, as -- I'm still confused.

25 So do you recall any statements by

1 the -- by anyone on the Company's side about  
2 how the policy related to a language?

3 A. I'm not sure I get that one.

4 Q. That's okay. We'll move on.

5 Now, with respect to -- we're  
6 talking about sick leave here, and legitimate  
7 sick -- legitimate sick leave, but taking a  
8 step back from this article, were there -- was  
9 there anything else, overall, that the Union  
10 and the Company negotiated to mitigate -- or to  
11 reduce the use of sick leave?

12 A. Yeah. Again, I think -- and  
13 everybody knows this, the Company -- you know,  
14 the carrier's or Company position on sick leave  
15 is, you know, they want sick leave used for  
16 legitimate purposes, and as does the Union.

17 So you know, throughout the  
18 negotiations we -- we took positions, I would  
19 say, from the Union side on making improvements  
20 for people to not utilize sick time when they  
21 weren't really sick. So we put in in many  
22 areas of the contract, improvements on  
23 utilization of sick time, and I'll give you  
24 some examples of that.

25 So the pay out for not utilizing



1 your sick time, under a Legacy American  
2 Airlines' agreement prior to this agreement was  
3 if you didn't use a sick day, it was valued at  
4 \$25. That's what you would get when you  
5 retire.

6 We negotiated -- and that was both  
7 groups -- we negotiated language in the fleet  
8 agreement that for every hour in your sick bank  
9 you had an option of getting paid \$9.20, or 50  
10 percent of your sick bank accrual into an HRA  
11 account. On the maintenance side it's 10.20 an  
12 hour, or 50 percent into the HRA.

13 So those were, I think, you know,  
14 critical pieces of -- for lack of better -- of  
15 basis of when you can, you know, come to work  
16 and you don't feel well and that was part of  
17 both policies, come to work, but the 2000, you  
18 brought up the concessionary period in 2003.  
19 Sick days were valued at half the value and  
20 things of that nature.

21 So we incentivized people to not  
22 take sick time. We were -- we were putting in  
23 language that, at least in my view, would  
24 incentivize people when they could come to work  
25 to come to work, not, so to speak, stay home

1 because they just didn't feel well.

2 Q. Right. Okay. So let's talk about  
3 use -- and I know we have a stipulation on  
4 shift swap, so this is not about that.

5 Was there anything done with respect  
6 to shift swaps to incentivize people or to  
7 allow them to manage their schedules?

8 A. So again, on shift swaps the  
9 historical application was, if you worked a  
10 double shift, you would only be paid for the  
11 first shift. The second shift would be unpaid.

12 We negotiated into the agreement if  
13 you called in sick for a double shift, you  
14 would get paid for both of those shifts.  
15 Again, this was an important element of our  
16 negotiations the Company agreed to.

17 Q. What about holiday pay on a -- sick  
18 on a holiday? Do you recall what was agreed to  
19 on there?

20 A. Yeah. So sick on a holiday, you do  
21 not utilize -- the way the contract is  
22 constructed is a holiday is a holiday, you get  
23 paid eight hours of holiday pay on that  
24 particular day and do not utilize your sick  
25 bank.

1           So, if you call in sick on a  
2           holiday, you're paid eight hours both regular  
3           pay. If you work you get paid a premium and if  
4           it's a holiday, you called in sick, you do not  
5           utilize your sick bank.

6           Q.       Okay. Was that a change from the  
7           Legacy American language, Legacy American TWU  
8           language?

9           A.       Yeah. I mean, the Legacy American  
10          language had, so to speak, bumpers around it.  
11          You had to call in multiple days and things of  
12          that nature to get paid and this was a  
13          significant shift and it was to utilize sick  
14          pay or not be paid for the day.

15          Q.       One second. Just want to take you  
16          to Union Exhibit 5A. It's Exhibit 6, Exhibit  
17          Page 6.

18                    ARBITRATOR WEINSTOCK: I'm  
19          sorry. I didn't hear the page.

20                    MS. GORNAIL: Exhibit Page 6.

21                    THE WITNESS: Wait. Wait.

22          Say that one more time, Christina. I'm sorry,  
23          I lost you, too.

24          BY MS. GORNAIL:

25          Q.       Sure. 5A Page 6.

1           A.     5A. Sorry. Let me just get there.

2                     Okay. I believe I'm there.

3           Q.     Okay. You spoke about a payout upon  
4 separation, so I just wanted to know. I see  
5 language here in 24L in the M&R contract.

6           A.     Correct.

7           Q.     Is that what you're -- what you were  
8 referring to?

9           A.     Yeah. That's the 10.80 an hour for  
10 the payout. You know, that's one of the  
11 options. The other option is the utilization  
12 of -- well, let me say it this way:

13                     The 10.80 is paid out to anybody  
14 when they leave the Company. Irrespective of  
15 retirement, they get paid \$10.80 for whatever  
16 hours they maintain, if they quit, die or  
17 retire.

18                     In retirement, you have an option  
19 to -- prior to retirement to request to be --  
20 your sick bank hours to be put 50 percent at  
21 full pay into a healthcare reimbursement  
22 account. So you have that option. You just  
23 have to notify the Company in advance of  
24 retirement.

25           Q.     Okay. Now, ultimately here, what

1 was your role in filing the grievance in this  
2 case?

3 A. Well, I -- I guess I would say I  
4 crafted the grievance for the Association, the  
5 Association leadership reviewed it and then  
6 ultimately I submitted it on behalf, I believe,  
7 for the Association.

8 Q. Why did the Union file a grievance  
9 in this case?

10 A. Well, there's -- I mean, if we turn  
11 to the policy, there's several things that I  
12 would say are, at least from our perspective,  
13 breach of what we negotiated contract-wise.

14 There's things in there that were  
15 never discussed at the table that put penalties  
16 on the membership that, to be honest with you,  
17 should have been brought up at the table or at  
18 least negotiated at the table.

19 Q. Okay. So let's specifically go  
20 to -- I'm going to have you walk through Union  
21 Exhibit 4.

22 A. One sec.

23 Okay. Do you want me to go or...

24 Q. Give me one second.

25 Before we do that, let's talk

1 about -- you said "going to the policy." So  
2 let's go to Union Exhibit 2 which is the  
3 policy, Exhibit Page 3.

4 A. Give me one sec. Okay.

5 Q. Are you at Page 3?

6 A. Yes.

7 Q. Okay. I am specifically directing  
8 you to holiday or critical operation for this  
9 time.

10 A. Yes.

11 Q. And based on this language, there's  
12 38 days of critical coverage for 2022; correct?

13 A. Yes.

14 Q. Okay. Now, was critical coverage  
15 ever discussed or negotiated -- I'm sorry --  
16 critical operation periods ever discussed  
17 during negotiations?

18 A. No. And I would argue that 38 days  
19 is 10 percent of the year that people have a  
20 loftier penalty for utilizing sick time we  
21 bargained for in the agreement, and this was  
22 never once brought up in the table; not even  
23 mentioned in any type of passing.

24 Q. Do you have other contracts where  
25 critical coverage or critical operations are

1 negotiated?

2 A. Yeah. They're negotiated in several  
3 other agreements.

4 Q. So here, under this policy now, the  
5 Company is charging additional penalties for at  
6 least 38 days of critical coverage.

7 So can you -- can you describe the  
8 operations from the maintenance and even the  
9 fleet side for -- for -- generally is it -- is  
10 it a 24/7 operation? Is it, like, you know,  
11 9:00 to 5:00?

12 How does that work?

13 A. And I believe Tom also testified to  
14 this but it's 24/7, 365 for the  
15 maintenance-related side of the house. That's  
16 a condition from the contract on the fleet  
17 service agreement. It's every -- I don't know  
18 that every station is 24/7 but it's close to a  
19 24/7 operation. They may have a couple hours  
20 where under -- you know, staffing where there's  
21 no flights in the middle of the night, they may  
22 not have somebody there, but I don't know  
23 specifically of any station that is not 24/7,  
24 365.

25 Q. Okay. And do you -- I know this

1 wasn't discussed at the table, but during -- in  
2 practice, have you seen anything with respect  
3 to how the Company is performing during holiday  
4 periods like Thanksgiving or anything like  
5 that?

6 A. No. The Company has commended us  
7 over the years since we've negotiated this  
8 agreement about the performance, whether it be  
9 D0, on-time arrival, those types of things  
10 throughout the agreement, so much so that  
11 there's multiple letters from David Seymour,  
12 who is chief operating officer on those  
13 subjects, and again, even in the agreement  
14 itself, we have provisions that allow for if  
15 the Company is able to, to provide people time  
16 off on the holiday based on staffing needs.

17 Q. Okay. So I'm going to show you --  
18 and this one I'm actually going to put on the  
19 screen because I know this has tiny font, it's  
20 Union Exhibit 11.

21 A. Okay.

22 Q. And I'm going to zoom in in one  
23 second.

24 Can you see it?

25 A. Yep. Let me move my cursor. It's



1 right on top of one of them. Okay. That's  
2 perfect.

3 MS. GORNAIL: Arbitrator  
4 Weinstock, do you need to get your -- I don't  
5 know if were going to get your -- okay.

6 BY MS. GORNAIL:

7 Q. So can you just walk through what is  
8 this report?

9 A. This is an M&R report on  
10 performance. The time period is December 19,  
11 2021 through September 2, 2022. So last year,  
12 so to speak, Christmas through New Year's Day,  
13 just passed New Year's Day.

14 Q. Just one second. You said September  
15 2nd. I see January 2nd here at the top.

16 A. I'm sorry. Did I say -- January  
17 2nd.

18 Q. It's okay. So okay. Perfect.

19 So can you just walk us through what  
20 these -- what these -- what these D0  
21 performance, CF performance, like, this top row  
22 right here?

23 A. So D0 is departure on time,  
24 departure performance, and these are  
25 maintenance grades, I believe. Whoops. There

1       you go. Sorry. That's even better.

2                       So I believe this chart is  
3 maintenance specific, maintenance grading.  
4 That's what it comes out of, tech ops.

5                       So the 94.91 percent is above goal  
6 clearly it's above the year, the date  
7 performance, so during that week that's  
8 captured here, we performed above the  
9 year-to-date 94.58 percent, we performed about  
10 above the month-to-date -- that's the MTD 98.58  
11 performance -- and the YST is yesterday we're  
12 at 95 percent but we drop .1 percent from -- I  
13 don't know how the yesterday ties it into  
14 because it's a weekly view, so I don't know if  
15 that's the like the week before based on the  
16 YST.

17                       But that's the theory behind it. So  
18 I believe it's the week prior, not the  
19 yesterday. And so we're above goal on D0.

20                       CF is completion factor, that means  
21 flights beginning to end completed. 99.82  
22 which is the goal's 99.60, and as you can see,  
23 those are lofty goals. I mean, they're nearly  
24 100 percent performance.

25                       Again, the 99.82 is above the

1 year-to-date goal, it's above the month-to-date  
2 goal, and it's, I believe, the YST, again,  
3 because these are weekly above the week prior.

4 And then the RS performance, I  
5 forget what that is. Right start. I'm sorry.  
6 Now I remember. That's right start  
7 performance, that's first flight of the day.

8 And, Christina, if you can move  
9 that, because of how my screen is, if you can  
10 move it to the left a little. Perfect. That's  
11 perfectly fine.

12 94.69 which is, you know, still  
13 better than the goal, but as you can see,  
14 better than the year, month, and week before  
15 performance targets across the board.

16 Q. Okay. So this is for, you said,  
17 December 19, 2021 to January 2, 2022.

18 And are there any -- well, you  
19 also -- so that's it with this exhibit unless  
20 the arbitrator has any clarifying questions on  
21 it.

22 ARBITRATOR WEINSTOCK: I do  
23 not. Thank you.

24 BY MS. GORNAIL:

25 Q. So Union -- so then going -- you

1 mentioned David Seymour letters.

2 Who is David Seymour?

3 A. Chief operating officer for American  
4 Airlines.

5 Q. Can you identify what the documents  
6 are that are in Union Exhibit 10?

7 A. These are a series of letters by  
8 David Seymour to the work force. I mean, the  
9 employees on our performance during given  
10 periods of time.

11 Specifically, I guess, the first one  
12 would be around the Labor Day holiday or just  
13 after, I believe.

14 Q. Okay. And overall, what are --  
15 these letters will speak for themselves but  
16 just, overall, what message has been  
17 communicated by the Company or specifically by  
18 David Seymour regarding the Company's  
19 operations during these periods?

20 A. Yeah. I think performance across  
21 all spectrums, at least on the TWU IAM  
22 Association side, have been commended for the  
23 work they've done. Their performance has been,  
24 in many cases, higher than ever in the  
25 Company's history, you know, the -- these are

1 accommodation letters speaking to the -- to  
2 the -- our members across the board on how well  
3 they've done in performing during these periods  
4 of time.

5 Q. Okay. So going to the -- I'm not  
6 going to direct you back to it, it's in the  
7 record, but the critical operations period that  
8 were identified in the policies, these 38 new  
9 days.

10 So it has Labor Day, where there's a  
11 three-day period of -- that's a critical  
12 operation period. 13 days from December 22nd  
13 to January 3, that's a critical operations  
14 period?

15 What happens -- how are your members  
16 charged points during these periods for --  
17 under the new attendance policy?

18 A. I believe they're charged either 2  
19 or 1.5. I'd have to reference the document  
20 itself. If they call in during this time  
21 period, again, our group is a 24/7, 365 work  
22 group. These are, in my mind, they're  
23 arbitrary to the Company periods that -- that  
24 they view, but people get sick at any point  
25 during year.

1                   And again, I'll go back to the  
2                   contract and what we bargain for in sick time  
3                   is. If they're using their sick time for  
4                   legitimate purposes and it happens to fall  
5                   during one of these time period, the penalty is  
6                   more severe.

7                   Not once was this discussed. Not  
8                   once was this brought forward as something that  
9                   we would be discussing, ever, in the  
10                  conversation.

11                 Q.       Did you ever see critical operation  
12                 periods in the -- in the Seymour policy that  
13                 you reviewed?

14                 A.       Not periods. I mean, he -- when he  
15                 -- oh, in the policy itself? No.

16                 Q.       Yeah, in the --

17                 A.       Yeah, no. I'm sorry. I was looking  
18                 at the documents. I mean, he does -- in the  
19                 documents he does talk about -- you know, he  
20                 does talk not necessarily to a specific day,  
21                 but these aren't even the same time periods as  
22                 what's in the agreement when he talks about  
23                 time periods.

24                 But, as far as the actual Seymour  
25                 policy from September of 2010, there's nothing

1 in there about any type of windows of time.

2 Q. Okay?

3 A. Or severe --

4 Q. Go ahead.

5 A. Or a more severe penalty.

6 Q. Okay. Did you have anything on the  
7 Legacy American side where there was a more  
8 severe penalty for any periods of time if you  
9 were -- if you were sick?

10 A. No.

11 Q. Now, with respect to -- you said you  
12 negotiated -- or you negotiated critical  
13 operations periods with other contracts.

14 So can you give us an example of any  
15 of them?

16 A. Yeah. Envoy actually has some in  
17 their fleet agreement where they pay a premium  
18 for certain days. They designate the day and  
19 then when folks come in they get paid a  
20 premium. They do it a little bit differently.  
21 I don't think it's tied to sick time.

22 You know, and again, these are -- if  
23 they're discussed at the table and there's  
24 conversation about it, then at least there's an  
25 up-tick or the thought that these things might

1       happen.

2                   This was never once discussed,  
3       viewed, anything, at the table and to put a  
4       penalty in place for any day different than any  
5       other day, absolutely should have been  
6       something that was bargained for.

7           Q.     Okay. I want to -- okay. Go ahead.

8           A.     Go ahead, Christina.

9                   These 38 days that's in 2022, that's  
10       an arbitrary number. It could be 56 next year,  
11       whatever. It could be anything, but 10 days  
12       out of the year. There's no -- this is a --  
13       this is -- I don't know how this wasn't  
14       bargained for, but to put it in a policy and  
15       say that we have a right to demand something  
16       greater than any other day that was never  
17       discussed to us, to me, is preposterous.

18          Q.     I'm going to take you to back to the  
19       attendance policy. Union 2, at Exhibit Page 6.

20                   Let me know when you're there and  
21       then I will direct you to exactly -- I want to  
22       talk to you about the late reports of sick  
23       calls.

24          A.     Give me one sec.

25                   It's six? Okay. Got it.



1 Q. You see the section that says, "Late  
2 notification for an absence"?

3 A. Yes.

4 Q. I'm not going to ask you to read  
5 that, but -- or can read it to yourself if you  
6 need to?

7 A. I'm fine. I know what it is.

8 Q. So, with respect to -- how, under  
9 the new attendance policy, are late reports for  
10 an absence treated?

11 A. Well, again, they've put in a  
12 penalty that says 59 -- will be -- 59 minutes  
13 or less will be assessed an additional point.

14 Arguably, we have language in the  
15 agreement that says, you know, our members will  
16 call in as early as possible. There's no --  
17 there's no one-hour or greater language in the  
18 agreement. Doesn't exist.

19 And this -- and I'm going to make a  
20 note here that this is why the Seymour policy  
21 is so critical. This is another area where  
22 attendance points versus an occurrence system  
23 and how it was presented to us across the table  
24 comes in to -- comes into play, because we were  
25 looking at it from what was said, which was, we

1 are going to adopt the 2010 Seymour Attendance  
2 Control Policy, which this -- this process adds  
3 points, which are different than it being a  
4 singular occurrence.

5 And adding in a time mark of an hour  
6 before, again, that's -- that was never  
7 discussed. It is in other agreements. It's  
8 written in other agreements that way.

9 Q. Okay. So let me try to understand.

10 So you said -- let's take that into  
11 pieces.

12 Okay. So you have the one-hour time  
13 frame. You said that was never discussed.

14 On the Legacy American side, was  
15 there ever a one-hour requirement for reporting  
16 -- for reporting illness?

17 A. No.

18 Q. Now, you said it's in other  
19 agreements. The Company has this in other  
20 agreements.

21 Can you -- do you know which  
22 agreements the Company has negotiated one-hour  
23 time frame?

24 A. Yeah, the CWA-IBT agreement for the  
25 gate agents has got a very specific line in it

1 that speaks to this.

2 Q. Can you go to Union Exhibit 14, at  
3 Exhibit Page 2?

4 A. Got it.

5 Q. Okay. Identify where the -- the  
6 one-hour language you're referring to is.

7 A. So, it's the CWA-IBT agreement with  
8 American Airlines, Article 18, under "Sick  
9 leave." The -- Article 18, Letter F, and it  
10 identifies, "An employee reporting off work  
11 sick is required to notify a supervisor  
12 designee as far in advance as possible, but no  
13 later than one-hour prior to their shift start  
14 time, unless there are extenuating  
15 circumstances" -- excuse me -- "as determined  
16 by the Company. Local policy may be less  
17 restrictive if determined by the Company."

18 Q. Okay. Did you -- so during  
19 negotiation did the Company ever raise this  
20 issue of having a one-hour reporting period for  
21 maintenance or for leave?

22 A. No. The language speaks for itself  
23 in the agreement. It's as soon as -- you know,  
24 call in as soon as possible. You know, I'm not  
25 quoting, but it's something along those lines.

1           That's what we bargained for, that's  
2           what the language says, and that's what the  
3           expectation is for people to do. If it's less  
4           than an hour, it's less than an hour; if it's  
5           two hours out, it's two hours out.

6           Every -- every individual, I would  
7           argue, has different circumstances on  
8           determining when they're not going to come into  
9           work and -- and, you know, again, back to that  
10          legitimateness, if they can or can't make it.

11          Q.     Okay. So let's go back to the  
12          overall -- I'm going to take you to Union  
13          Exhibit 4.

14          A.     Okay.

15          Q.     You said that the Company -- the  
16          parties chose not to negotiate the actual  
17          policy, the attendance policy, in the contract,  
18          right, in the JCBA?

19          A.     Correct.

20          Q.     Okay. And so, do you -- I mean, do  
21          you understand that the -- is it the Union's  
22          position that the Company could make no changes  
23          to the attendance policy?

24          A.     No. The -- I mean, the Company can  
25          make changes to the attendance policy that are,

1 I would say, reasonable and fall within the  
2 just-cause standard.

3 Certainly COVID would be a great  
4 example of a time when the Company made an  
5 adjustment to what is the attendance policy and  
6 said, hey, we need to make an adjustment for  
7 these reasons. And nobody would be working for  
8 American Airlines if they didn't make an  
9 adjustment to the policy during COVID, because  
10 realistically, we're out for multiple days,  
11 multiple weeks, all sorts of things during  
12 COVID.

13 So logic says they can make  
14 adjustments, and I will say that the Union's  
15 position, and I don't think the Company would  
16 object, is if we were in a disagreement, that  
17 everything was subject to this form from  
18 arbitration, the just-cause standard.

19 Q. Okay. So what is it about this  
20 policy that violates the contract, or -- makes  
21 this -- like, what's -- or makes this an  
22 unreasonable policy?

23 A. There's multiple things. I mean,  
24 again, we can go through each one of these, but  
25 I'll just start with what -- where the

1       conversations in negotiations started was about  
2       a point system. Ultimately, we moved into, and  
3       were presented with, an occurrence system that  
4       had a different standard around it.

5               The -- so, right off the bat, a  
6       single occurrence, six to ten days or whatever  
7       the number was, in the David Seymour 2010  
8       attendance policy, was an occurrence, and that  
9       would be one occurrence.

10              The new policy is a point system  
11       that after five days you get two points. So it  
12       -- it's out of -- right off the bat, it's out  
13       of balance with what was presented to us as how  
14       the system would work going forward, how we got  
15       to an agreement rather quickly.

16              That's just first. And then you go  
17       down, compounding of points. The points  
18       compound. So one -- I think one event could be  
19       up to three or four points, and put you in a  
20       disciplinary situation under is this new  
21       attendance policy that the enacted versus there  
22       was no compounding of --

23              ARBITRATOR WEINSTOCK: Excuse  
24       me, folks. May I just have a one-second break?  
25       I have to respond to a doorbell.

1 MS. GORNAIL: Of course.

2 ARBITRATOR WEINSTOCK: We're  
3 off the record.

4 (A recess was taken.)

5 BY MS. GORNAIL:

6 Q. Gary, do you need the court reporter  
7 to read back what you were saying or --

8 A. Just -- yeah. If -- just the  
9 last on the compounding side of it. Then I can  
10 go from there.

11 (Reporter read back from the  
12 record.)

13 THE WITNESS: Okay. All  
14 right.

15 BY MS. GORNAIL:

16 Q. Okay. So you can keep going with  
17 your answer.

18 A. Yeah. So there was no -- under the  
19 Seymour letter or the Legacy American process,  
20 69, there was no compounding effect. Because  
21 it wasn't a point system; it was an  
22 occurrence-based system.

23 Q. Okay.

24 A. Obviously, and I'm just going to go  
25 down, you know, from this but the critical

1 operation period, we at least speak to -- I  
2 mean, that did not exist ever in either land  
3 and now that's been put into this new AA  
4 policy.

5 I -- discussions with employees,  
6 every step of the way under the old policies,  
7 there was a discussion. Employees knew where  
8 they were in the process. Today, you get to  
9 discipline before anybody starts talking to  
10 you.

11 They're not looking at legitimate  
12 use of sick time and there's a determination  
13 made after, I think, three points, which you  
14 get because there's no conversation, that, now,  
15 when you get to discipline, we're going to  
16 start talking to you.

17 Where, under the Legacy systems,  
18 there were conversations in the beginning and  
19 even under the -- you know, no points but  
20 occurrences, you might or might not be in a  
21 situation because it was reviewed by a human  
22 being, which isn't happening anymore.

23 Again, it was a "may" system, not a  
24 "will" system.

25 Q. Hold on. Before you get to that.



1 We're talking about the discussion with the  
2 employees.

3 So, and you're reviewing Union 4,  
4 which is the -- you're comparing the two sides  
5 of the chart.

6 A. Right.

7 Q. But this statement, that, "once a  
8 team member reaches a level 3, an attendance  
9 discussion is required and documented after  
10 each occurrence."

11 Do you know, after a level 3, how  
12 many steps there are for termination under the  
13 policy?

14 A. I think there's just one more step.

15 Q. Okay.

16 A. If I remember correctly.

17 Q. Yeah. So question about -- because  
18 you've talked about -- you've mentioned that  
19 there is just cause and if there's legitimate  
20 illness or discipline, that it would be subject  
21 to just cause.

22 So how does this -- that the policy  
23 only requires the Company to speak with an  
24 individual after they've reached level 3, how  
25 does that play into or does that -- does that

1 contradict anything that you were told at the  
2 table?

3 A. Yeah, again, it -- the conversations  
4 at the table and the discussions were about  
5 continuing the process of having an interaction  
6 between the employee and whether it be under  
7 the American terminology and LTA or a member  
8 of, you know, the management team to discuss  
9 the use of your sick time.

10 I mean, that's the whole -- that's  
11 the whole purpose of the language is to have a  
12 discussion to find out if it was legitimate or  
13 not. This is cookie-cutter. You go on this  
14 process, based on use.

15 Q. Okay.

16 A. There's no due process in this  
17 whatsoever. I mean, it's legitimately just --  
18 it might as well be computerized and kick out  
19 stuff and, in fact, that's what it seems like  
20 it is.

21 Q. Okay. Well, you were -- I  
22 interrupted you before.

23 You were speaking about the  
24 difference between "may" versus "will," which  
25 we talked about a lot. There were other people

1 that testified about that as well.

2 So can you just summarize? What is  
3 the issue here with respect to this -- first of  
4 all, what is a "may" be disciplined versus a  
5 "will be disciplined"? What does that mean  
6 when we're talking about it in your testimony?

7 A. So again, may is the -- well, let's  
8 use the bona fide legitimate use of sick time,  
9 words that are in the contract.

10 If I use my sick time for its  
11 intended purpose which is, you know, the -- we  
12 both -- at least the Union supports that IAM  
13 and TWU, then it is -- you have a conversation,  
14 you explain what happened, it's reviewed and  
15 you -- if you can explain, you just, you know,  
16 for lack of a better term, you're at the  
17 Jumbotron at the ball game and that was one of  
18 the conversations at the table I remember.

19 And you know, bang, there's a -- you  
20 know, you jumping up and down, there's a chance  
21 you may be disciplined. Probably a good  
22 chance, you know, you may be disciplined.

23 Under this system, if you're at home  
24 watching the ball game, because you're sick as  
25 a dog, you will be disciplined and -- because

1       there is no look at what the purpose of your  
2       legitimate use of sick time was.

3               And again, that's right in line with  
4       what was the discussion at the table about the  
5       legitimate use of sick time.

6               That was one of the -- the -- kind  
7       of the visuals that was given to the Company,  
8       and, obviously, expressed across the table on  
9       what we viewed legitimate use of sick time as.

10              You know, two different ways of  
11       watching a ball game. One has a very different  
12       perspective than the other; person is still  
13       watching the ball game either way.

14              Q.       So Union Exhibit -- let me go to  
15       Union Exhibit 22 for a second. Back to the  
16       pages that you referred to as the most  
17       important that you looked at and that when the  
18       policy, the Seymour policy was sent over during  
19       negotiation.

20              So let me know when you're there,  
21       Union Exhibit 22, Page 7.

22                     ARBITRATOR WEINSTOCK: I'm  
23       sorry, Ms. Gornail. I didn't hear the page.

24                     MS. GORNAIL: Exhibit Page 7.

25                     ARBITRATOR WEINSTOCK: Thank

1       you.

2                               THE WITNESS:   Okay.   Go ahead,  
3       Christina.

4       BY MS. GORNAIL:

5               Q.       So under that prior policy, at what  
6       point would dis-- like, could discipline begin?

7               A.       Okay.   So under the Seymour policy,  
8       2010, it might, may, after four occurrences.  
9       Again, an occurrence is not specific to one day  
10      or ten days; it's the occurrence, the event,  
11      whatever that was.

12              If I'm in the hospital and, you  
13      know, have an appendectomy and it takes seven  
14      days for me to go through that process, that  
15      would be considered an occurrence.

16              Under the new policy, I don't know  
17      what it would be considered, to be fair.

18              Q.       Okay.   So you have -- you said  
19      after -- so it was five occurrences -- when  
20      five occurrences were -- where someone could  
21      get a verbal warning is what this looks it  
22      says.

23              A.       "May" occur on the fifth occurrence.

24              Q.       Okay.   Now, under the new policy,  
25      how -- how many -- when does discipline begin?

1           A.     I believe it's after the fourth  
2 point. I'd have to flip to it. I think it's  
3 on the fourth point.

4                     You get three points and then the  
5 fourth you get begins discipline. But I'm not  
6 looking at it, but my recollection.

7           Q.     Okay. So, yeah. It's -- if you go  
8 to Union Exhibit 4, it's in there as well.

9                     But -- so you're correct. It's four  
10 points with -- with discipline.

11                    Now how -- at what level is  
12 termination under the current policy?

13           A.     Under the new policy?

14           Q.     Policy at issue here.

15           A.     Yeah. So it's 11 points and again,  
16 these points compound, so it's not -- it's not,  
17 I called in sick and I had an occurrence; it's,  
18 I called in sick and I could get three or four  
19 points in one occurrence.

20                    Like, three times I called in sick,  
21 technically, under this policy, I will be  
22 terminated.

23                    Anyhow, I'll leave it at that.

24           Q.     Okay. So how does this comport with  
25 the discussions you had at the table?

1           A.     I think there's a critical part  
2           that's in this table discussion that needs to  
3           be brought forward, and that is, the  
4           maintenance agreement and shift swap talks  
5           about occurrence. That's happening in  
6           realtime. These are kind of simultaneous.

7                     You're looking at the policy that  
8           talks about occurrence and a process of how  
9           this happens. There's no compounding. All  
10          these things got to be tied together as part of  
11          the discussions at the table, why we reached an  
12          agreement on such an important subject in such  
13          a short period of time.

14                    I'm not sure who, what, why, where  
15          this policy is coming from. I think it's a  
16          cookie-cutter because that's what we want to  
17          apply across all work groups at American  
18          Airlines -- I'm not sure what the pilots or  
19          flight attendants or the gate agents have -- it  
20          just seems to be hastily put together.

21                    It's a point system that has nothing  
22          to do with what we discussed at the table when  
23          we got to an agreement. There was discussions  
24          previously about points. The end discussion  
25          was a very specific document. Language in the

1 agreement says occurrence. The document says  
2 occurrence. Everybody on the Union side of the  
3 table is looking on a system of occurrences and  
4 being presented with something that made  
5 "whether I loved it or not" sense.

6 What I'm looking at today is 180  
7 degrees away from what the negotiators on the  
8 other side of the table discussed, presented  
9 and we were told we would be working or living  
10 under.

11 This is nowhere near that and this  
12 whole thing comes back to how you look at the  
13 math and how quickly an employee can be  
14 terminated. It's completely out of balance  
15 with what we were presented at the table as to  
16 how somebody could get to a level of  
17 termination. And that's what you bargain.  
18 This is critical -- this is a major part of  
19 every labor agreement.

20 Q. Okay. So let me just try -- let me  
21 ask a few question about that.

22 So you have -- we talked about  
23 there's an 11-point system and now somebody can  
24 have four -- someone can be terminated with  
25 four occurrences.



1           A.     Yeah.

2           Q.     So I'm just going to give you -- so  
3     let's say you have somebody that has -- who  
4     gets sick four times in the year, right,  
5     they -- and it -- one of them is more --  
6     they're sick for a long time. So it's six or  
7     more consecutive days and -- so they have four  
8     absences, all illness.

9                     On the face of this policy, could  
10    one of your members be terminated?

11          A.     They will be terminated. That's the  
12    way it's written.

13          Q.     How does that come -- differ from  
14    what you were told at the table?

15          A.     Well, again, the -- the occurrence  
16    process, nine occurrences -- what was  
17    presented, all these things were a system that  
18    -- that was very much in line with what -- in  
19    this particular case -- and I'm going to speak  
20    from the M&R case because that's where I'm  
21    involved in the discussion heavily -- where the  
22    TWU is a much larger work group. So the group  
23    that had to get acceptance, I guess, to -- to  
24    letting go of the 1969 language was my group.

25                     This -- this -- this program that

1 was presented, the Seymour 2010, this is what  
2 we're going to go to. The word occurrence is  
3 in the language, things of that nature. We  
4 were working off exactly how it was presented.

5 If the Company wanted to go to this  
6 system and do all these things, they should  
7 have said, "This is what we're doing, this is  
8 how it's going to go, and you need to  
9 understand that because this is what the policy  
10 is going to look like," and we would have never  
11 reached an agreement in less than a month on  
12 such a critical article.

13 We probably would have been to the  
14 end, like we were in some of the other  
15 articles, fighting to the death on it.

16 This is -- this is not in line with  
17 how bargaining works.

18 Q. Okay.

19 MS. GORNAIL: I might be done  
20 with you. Just give -- can I have a short  
21 break just to double-check with the people in  
22 the other room?

23 ARBITRATOR WEINSTOCK: How  
24 much time would you like?

25 MS. GORNAIL: Five minutes.

1 ARBITRATOR WEINSTOCK: Let's  
2 go off the record for a moment.

3 (A recess was taken.)

4 ARBITRATOR WEINSTOCK: And,  
5 Ms. Gornail, do you have any additional  
6 questions for Mr. Peterson?

7 MS. GORNAIL: No, I do not.

8 ARBITRATOR WEINSTOCK: Okay.  
9 Is the Company ready for cross, or do you need  
10 some time?

11 MS. JOSHI: Arbitrator  
12 Weinstock, I thought, since it is now almost  
13 12:30, that this would be a good time to  
14 combine both our break and lunch.

15 ARBITRATOR WEINSTOCK: All  
16 right. Let's go off the record for one moment,  
17 please.

18 (A recess was taken.)

19 ARBITRATOR WEINSTOCK: We will  
20 take a lunch break from 12:25 to 1:30.

21 Mr. Peterson, you can stretch and  
22 speak with anyone you want except about your  
23 testimony. So politics, sports, and weather  
24 are always lofty topics in the holidays, but  
25 please don't discuss your testimony with

1 anyone.

2 Everyone enjoy your lunch.

3 We'll be back in session at 1:30.

4 (A lunch recess was taken.)

5 ARBITRATOR WEINSTOCK: Thank  
6 you. I hope everyone feels refreshed after the  
7 lunch break, and we're ready for the Company's  
8 cross of Gary Peterson.

9 So whenever you're ready, Ms. Joshi.

10 MS. JOSHI: Thank you.

11 CROSS-EXAMINATION

12 BY MS. JOSHI:

13 Q. Mr. Peterson, just a few questions  
14 for you. I wanted to make sure I understood  
15 your testimony.

16 Is it the Association's position  
17 that a points system is unreasonable?

18 A. I would argue that it's -- it's part  
19 of the position. Again, as represented to us  
20 in the maintenance and related room -- excuse  
21 me -- when the discussions were taking place it  
22 was clearly articulated by Jerry Glass, when he  
23 presented to us the September 2010 Seymour  
24 policy. During those discussions, it was  
25 articulated as an occurrence-based system.

1           It's also referenced in the  
2 maintenance agreement about occurrences. So,  
3 again, it's all how it was presented. The  
4 Company never -- you know, so to speak,  
5 presented us anything other than that.

6           They clearly could have presented us  
7 a points-based looking system and said this is  
8 what it's going to look like, but how it was  
9 presented is it would be an occurrence-based  
10 system the compounding effect, again, of how  
11 this points-based system --

12           Q.     I'm sorry, Mr. Peterson, I'm just  
13 going to cut you off because I'd just like  
14 answer to my question.

15           So my question to you was: Is it  
16 the Association's position that a points system  
17 is unreasonable, and I think what you just said  
18 was if the Company had proposed it to the  
19 Association, it would not be unreasonable; is  
20 that right?

21           A.     No. I actually testified completely  
22 the opposite already once, that -- that it  
23 wasn't presented that way.

24           So I guess I --

25           Q.     No. I'm --

1 A. The answer to your question --

2 Q. No. I don't mean to --

3 A. No. It's okay. It's all right. Go  
4 ahead.

5 Q. I just -- I want to make sure we're  
6 not to talking past each other.

7 So I want to know, is it the  
8 Association's position that a points system is  
9 unreasonable?

10 Setting aside whether the Company  
11 proposed it or not, is it the Association's  
12 position that a points system is unreasonable?

13 A. The current points system that's  
14 been presented is unreasonable.

15 Q. No, I'm not --

16 A. I can't answer.

17 Q. I'm not asking --

18 A. Well, you're asking for a yes-or-no  
19 answer, and that's not a yes-or-no question.

20 Q. Yeah.

21 A. It's not.

22 Q. It is. It is.

23 I'm asking if the points system --

24 A. No, because it depends -- it depends  
25 on the system. If the system was a

1 points-based system that took out many layers  
2 of what's there, then the answer could be yes,  
3 that would be acceptable.

4 But I can't answer it in a singular  
5 -- you're looking for a singular answer and  
6 there's not a singular answer because under a  
7 points-based system that doesn't have all these  
8 different effects, it might be reasonable, but  
9 what is currently being presented is not  
10 reasonable and -- and that's why we're here  
11 today. I can't answer --

12 Q. Okay.

13 A. -- if it's our position that a  
14 points-based system is unreasonable because we  
15 don't have something in front of us to even  
16 consider that might be reasonable. And I think  
17 --

18 Q. I think the answer to my question is  
19 somewhere in there. Sir, I'm just going to ask  
20 my question --

21 A. I can't answer it. I can't answer  
22 your question because it's not a yes or no.

23 Q. So -- so?

24 A. That's the answer.

25 Q. I think we can -- I think we can

1 move on.

2 A. Okay.

3 Q. So you're familiar with the  
4 Association's proposal throughout the course of  
5 the negotiation; is that right?

6 A. Yes.

7 Q. Okay. And you're aware that the  
8 Association proposed language that would  
9 require the Company to not change -- or that  
10 the Company could not change its Company  
11 policies unless mutually agreed to by the  
12 Company and the Union?

13 A. Okay. I'm not sure if that was a  
14 question.

15 Q. It was. The question was: Do you  
16 know if the Association made that proposal?

17 A. We made several proposals along the  
18 way, yes. And then, nobody -- I don't think I  
19 articulated anywhere along the way that the  
20 Company couldn't change its policy.

21 Q. Okay. So you agree that the Union  
22 was not successful in obtaining that language  
23 in the contract?

24 A. That was for every policy that the  
25 Company put in place and it was broad-brushed.



1 So the answer is -- again, you know, you're  
2 asking me a very specific question, was it --

3 Q. Yeah. And the question was: Was  
4 the Union -- you'd agree with me that the Union  
5 was not successful in obtaining that language  
6 in the contract?

7 A. No, because we would have -- we  
8 would have had an agreement on every policy at  
9 that point. The answer is no.

10 MS. JOSHI: Nothing further  
11 for this witness.

12 ARBITRATOR WEINSTOCK: Okay.  
13 Thank you.

14 Any redirect, Ms. Gornail? I am  
15 asking only to be polite.

16 MS. GORNAIL: No. No.

17 ARBITRATOR WEINSTOCK:  
18 Excellent. All right. Mr. Peterson, your  
19 testimony is concluded. Now, you can confer  
20 with the teams, should they have a caucus.

21 Does the Union have any other  
22 witnesses to call?

23 MS. GORNAIL: No. The only  
24 issue is with respect to the notes that were  
25 in. We do have -- there was an issue brought

1 up at the beginning of the last -- the first  
2 day of arbitration as to whether the notes can  
3 come in.

4 We do have individuals who prepared  
5 the notes if they needed their authenticity  
6 established, but I don't know if we need that  
7 at this point. I don't know if the Company is  
8 still objecting to the notes coming in as  
9 evidence.

10 MS. JOSHI: I think -- I think  
11 the notes -- you know, I don't object to them  
12 for what they're -- you know, they purport to  
13 be notes of these sessions. You know, I don't  
14 think that we are agreeing that in future  
15 arbitrations we would agree to -- that we would  
16 not object to them in -- being entered into  
17 evidence, but in this particular instance, I  
18 don't see a problem with bringing them.

19 MS. GORNAIL: Okay. Then, so  
20 with that I have no other witnesses.

21 ARBITRATOR WEINSTOCK: All  
22 right. Let's go off the record for one minute.

23 (A recess was taken.)

24 ARBITRATOR WEINSTOCK: Is the  
25 Company ready to call its first witness?

1 MS. JOSHI: We are. We just  
2 need two minutes to set up our -- our  
3 individual cameras so you'll see both of us, as  
4 opposed to seeing little tiny dots. So just  
5 give us one second.

6 ARBITRATOR WEINSTOCK: Okay.  
7 That's fine. We're off the record for a  
8 moment.

9 (A recess was taken.)

10 ARBITRATOR WEINSTOCK: The  
11 Company is calling Jerrold Glass as their next  
12 witness.

13 Mr. Glass, if you'll please raise  
14 your right hand. Thank you.

15 JERROLD GLASS, a witness  
16 herein, having been first duly sworn, was  
17 examined and testified as follows:

18 ARBITRATOR WEINSTOCK: Thank  
19 you. Whenever you're ready, Ms. Joshi.

20 MS. JOSHI: Thank you.

21 DIRECT EXAMINATION

22 BY MS. JOSHI:

23 Q. I think we've just covered the  
24 spelling of your name so I'll start with,  
25 Mr. Glass, by whom are you employed and what is

1 your position?

2 A. I am employed by the law firm of  
3 Ford & Harrison. As part of the law firm, they  
4 own a consulting firm called F&H Solutions  
5 Group, and I'm president of the consulting  
6 firm.

7 Q. And what does that consulting firm  
8 specialize in?

9 A. We're a management consulting firm  
10 that specializes in labor relations, employee  
11 relations and human resources.

12 Q. And how long have you been in your  
13 position as president of F&H Solutions Group?

14 A. The business started out in 1989 as  
15 J. Glass and Associates. In the mid-'90s, Ford  
16 Harrison made an investment in the business.  
17 It stayed as J. Glass and Associates.

18 Then I left in 2002, took a leave of  
19 absence to become executive vice president and  
20 chief HR officer at US Airways. And then I  
21 returned to the expanded business, then called  
22 F&H Solutions Group, in which the two owners  
23 were myself and the law firm.

24 Q. And how long were you the executive  
25 vice president chief of human resources officer

1 at US Airways?

2 A. Three and a half years.

3 Q. From 2002 to 2005?

4 A. Yeah, from like March of 2002 to the  
5 end of September of 2005, when America West and  
6 US Airways merged.

7 Q. And in your current and prior  
8 positions, have you had experience negotiating  
9 collective bargaining agreements?

10 A. Yes. That's what the firm and I  
11 personally am best known for. I've negotiated  
12 now probably close to 350 collective bargaining  
13 agreements as chief negotiator.

14 Q. And does that include collective  
15 bargaining agreements in the airline industry?

16 A. Yes, it does.

17 Q. Were you involved in the  
18 negotiations for the current maintenance and  
19 related and fleet CBAs between American and TWU  
20 IAM association?

21 A. Yes. I was the Company's chief  
22 negotiator.

23 Q. And is that true for both CBAs?

24 A. Yes.

25 Q. We'll try not to retread too much

1 testimony here, but can you give us an estimate  
2 of when the negotiations began and when they  
3 concluded?

4 A. We first met in December of 2015.  
5 Reached a tentative agreement at the end of  
6 January of 2020 with ratification, I believe,  
7 occurring at the end of March of 2020.

8 Q. And why were the parties in  
9 negotiation at this time?

10 A. After the merger of US Airways and  
11 American, we needed to -- well, let me back up.

12 After the merger of US Airways and  
13 American, the IAM and TWU formed what is known  
14 as the "Association" where the Unions, in  
15 essence, shared representation of the mechanic  
16 and related and fleet service groups.

17 And so as a result, we needed to  
18 negotiate a single collective bargaining  
19 agreement. We referred to it as a joint  
20 collective bargaining agreement or a JCBA.

21 Q. Thank you.

22 And did those negotiations take  
23 place in person?

24 A. Yes.

25 Q. Where?

1           A.       Mostly in Dallas.  Once we entered  
2 mediation, we also met in Florida, in south  
3 Florida, in Atlanta, and then the end of  
4 negotiations were -- they took place in  
5 Washington, D.C.

6           Q.       Were the negotiations for the  
7 mechanics and related and fleet services  
8 proceeding at the same table, at the same time?  
9 Were they separate?

10                   Can you describe for us how those  
11 negotiations proceeded?

12           A.       Sure.

13                   So we had two -- we had two  
14 committees; one was made up of the maintenance  
15 and related groups, the other table was fleet  
16 service.

17                   And so sometimes they met at the  
18 same time; other times they didn't meet at the  
19 same time.

20                   Whenever it was possible or there  
21 was a particularly important matter that had to  
22 be discussed or negotiated, I made sure I was  
23 at both tables.

24           Q.       And did you participate in the  
25 negotiation of the sick leave article at both

1 tables?

2 A. I did.

3 Q. And for the M&R CBA mechanics and  
4 related, who else participated at the Company?

5 A. We had a fairly large group. Jim  
6 Weel, of course, was my right-hand man and was  
7 very much involved in helping to lead the  
8 negotiations. We had Josh Voss, Ellen Patton,  
9 Mark Nelson, and then from each separate group,  
10 whether it was GSE or stock clerks or  
11 maintenance control, we had our subject matter  
12 experts at the table as well from the Company  
13 side.

14 Q. And for the fleet CBA, who  
15 participated for the Company?

16 A. Rob Jones, Tim Ahern, who later  
17 retired, Bob Western, Diane Taber and, of  
18 course, Lynn Vaughn came in during negotiations  
19 as well.

20 Q. And who represented the Association  
21 during negotiations for the mechanics and  
22 related?

23 A. Tom Regan was the chief negotiator,  
24 ably assisted by Gary Peterson, and as  
25 negotiations wore on, Gary took a more



1 prominent role in those negotiations as his  
2 role changed from the -- being a local  
3 president to something greater than that.

4 Q. And who represented the Association  
5 for the fleet negotiations?

6 A. Originally it was Mike Mase, Bryan  
7 Oyer. Mike Fairbanks was there. There were a  
8 bunch of other fleet service representatives  
9 from both the IAM and the TWU.

10 Q. Let's start with negotiations for  
11 the mechanics and related.

12 Let me direct your attention to  
13 Company Exhibit -- in the Company Exhibit  
14 binder, Company Exhibit 7.

15 (Company Exhibit No. 7 was  
16 marked for identification.)

17 BY MS. JOSHI:

18 Q. And I know we've heard some of this  
19 testimony regarding proposals, but I think  
20 it'll be useful for us to walk through these.

21 Can you identify Company Exhibit 7?

22 A. Company Exhibit 7 was the Union's  
23 first proposal on sick leave. And the way they  
24 described their proposal to us was that  
25 existing IAM language was in red, existing TWU

1 language was in blue, and the new language was  
2 in black.

3 Q. And just as a clarification point,  
4 at the top of this proposal, under March 24,  
5 2016, it says, "M&R, MLS, MCT and MTS."

6 Can you explain what that refers to?

7 A. Sure.

8 M&R was mechanic and related.

9 MLS was material -- well, those were  
10 stock clerks. I've -- I sometimes forget the  
11 abbreviation -- materially logistics  
12 specialist.

13 I believe MCT, was maintenance  
14 control technicians and MTS was maintenance  
15 training specialists.

16 Q. Thank you.

17 And how were the proposals on sick  
18 leave exchanged?

19 A. In person. I'm not sure what you  
20 mean by that.

21 Q. Yeah, in person.

22 A. Yeah.

23 Q. And hard copies were exchanged?

24 A. Yes. Yes.

25 Q. And did the parties discuss the

1 proposals when they exchanged them?

2 A. Yes, we did.

3 Q. And you mentioned the structure  
4 here, that red was from the IAM book, blue was  
5 from the TWU current book, and black was new  
6 language.

7 Directing your attention to  
8 paragraph G, based on that, where did that  
9 language come from in the --

10 A. Came from the standalone IAM  
11 agreement that was in place at that time when  
12 we were negotiating.

13 Q. Okay. Can I have you turn to  
14 Company Exhibit 5, just keeping a finger there  
15 in Company Exhibit 7?

16 (Company Exhibit No. 5 was  
17 marked for identification.)

18 BY MS. JOSHI:

19 Q. Can you identify Company Exhibit 5?

20 A. Company Exhibit 5 is the -- well,  
21 they're portions of the standalone agreement  
22 between US Airways and the IAM.

23 Q. And is that for maintenance and  
24 related?

25 A. Yes, it is.

1 Q. Directing your attention to section  
2 12(e), which should say Page 90 at the bottom,  
3 and going on to Page 91, did the Association  
4 propose article 12(e) in its entirety in  
5 paragraph G?

6 A. They did not.

7 Q. And what was different?

8 A. They left out, if you look at page  
9 91, lines 4 and 5, they left out the sentence  
10 that said, "Employees who abuse sick leave  
11 privileges may be subject to disciplinary  
12 action by the Company."

13 Q. Thank you.

14 Turning back, then, to Company  
15 Exhibit 7, and looking at the next paragraph,  
16 paragraph H of the Association's opening  
17 proposal on sick leave, where did that language  
18 come from?

19 A. That was TWU language.

20 Q. Doing the same thing here but  
21 flipping now to Company Exhibit 3.

22 (Company Exhibit No. 3 was  
23 marked for identification.)

24 BY MS. JOSHI:

25 Q. Can you identify Company Exhibit 3?

1           A.       Company Exhibit 3 are excerpts from  
2           the American Airlines' agreement with the TWU  
3           covering mechanic and related employees.

4           Q.       And directing your attention to  
5           article 24B, which will be Page 151 at the  
6           bottom, it's about four pages in.

7           A.       151.

8           Q.       At the bottom, yes?

9           A.       Yes, I see it.

10          Q.       Did the Association propose the  
11          language from article 24B from the TWU CBA in  
12          its entirety?

13          A.       No.

14          Q.       Okay. And what was different?

15          A.       There -- what was different was the  
16          reference that said, "As set forth in Article  
17          34." That was not in their proposal.

18          Q.       Then, flipping back again, to  
19          Company Exhibit 7, and turning to Paragraph J.

20                    Where did the language in Paragraph  
21          J, "As proposed by the Association" come from?

22          A.       That also came from the American  
23          Airlines' agreement.

24          Q.       Turning back to Company Exhibit 3.

25          A.       Yes.

1 Q. And going to Article 34E?

2 A. I see it.

3 Q. How did the Association's proposal,  
4 in Paragraph J, compare to Article 34E?

5 A. Again, they left out what we thought  
6 was an important element of their proposal.

7 If you look at Paragraph E, on Page  
8 182, the last sentence that says, "Accordingly,  
9 the Company will take the following actions  
10 before issuing a disciplinary notice for  
11 unsatisfactory attendance," and so on and so  
12 forth.

13 That sentence was not in their  
14 proposal, nor was Numbers 1 through 5 of their  
15 proposal, under E.

16 Q. And what did the Association convey  
17 at the table -- what did they convey was the  
18 significance of these provisions, and I mean  
19 during negotiations, with respect to  
20 discipline?

21 A. They didn't want anybody disciplined  
22 for using sick leave.

23 Q. Okay. Did the Company respond to  
24 the Association's proposal?

25 A. We did.

1 Q. Let me direct your attention to  
2 Company Exhibit 8.

3 (Company Exhibit No. 8 was  
4 marked for identification.)

5 BY MS. JOSHI:

6 Q. Can you identify this document?

7 A. This is our first counter that we  
8 made to their pass on March 24th. Ours is  
9 dated 11 -- excuse me -- April the 12th, of  
10 2016.

11 Q. Okay. And I'd like to direct your  
12 attention to Paragraph G, the strike through  
13 immediately following G, and Paragraph I.

14 Can you walk us through the  
15 Company's response on these paragraphs?

16 A. Sure. In Paragraph G, we reinserted  
17 the language from the IAM agreement that you  
18 can see underlined in track changes on Lines 41  
19 and 42.

20 Going to the next page, we struck  
21 the sentence that no one would be disciplined  
22 for sick leave.

23 And then in Paragraph I, we struck  
24 Lines 13 through 15, which was acknowledging  
25 the American Airlines' attendance control

1 guidelines of 1969.

2 Q. And what did you tell the  
3 Association, at the table, about the Company's  
4 proposal in these areas?

5 A. We told them that we would not enter  
6 into an agreement where we could not discipline  
7 employees for being out of work, being sick.

8 We told them that in all likelihood,  
9 we were moving to the US Airways' policy, which  
10 I identified as a no-fault point system and  
11 that, you know, basically, that there would be  
12 no agreement if we didn't have the right to  
13 discipline employees.

14 Q. And what did you tell the  
15 Association with respect to the deletion of the  
16 reference to the 1969 policy?

17 A. We told them we were moving to the  
18 Legacy US attendance policy, what's referred to  
19 as the Seymour policy.

20 Q. And did you in fact negotiate over  
21 which policy would be applied?

22 A. No. We also informed them many,  
23 many, times that we would not negotiate over  
24 our Attendance Control Policy, as well as other  
25 policies that we had.



1           The Union had made proposals  
2 throughout negotiations that whatever policy  
3 was in place at the time of a ratified  
4 agreement would remain in place and could not  
5 be changed by the Company.

6           Q.     And turning to the first page of  
7 Company Exhibit 8, Paragraph G, can you explain  
8 why the Company inserted the last sentence in  
9 Paragraph G?

10          A.     Sure. We had -- we had an existing  
11 policy in place. We did discipline employees  
12 for sick usage. And the policy went hand in  
13 hand with the paragraph that was in place, and  
14 obviously, if you take out that last sentence,  
15 that changes our ability to implement and  
16 exercise our mandatory rights to put that  
17 policy in place.

18          Q.     And what, if anything, did you tell  
19 the Association regarding the Company's  
20 willingness to give up its rights in this area?

21          A.     We said we wouldn't make an  
22 agreement if we had to give up that right.

23          Q.     Did the Association respond to the  
24 Company's April 12th proposal?

25          A.     They did.

1 Q. Directing your attention to Company  
2 Exhibit 9.

3 (Company Exhibit No. 9 was  
4 marked for identification.)

5 BY MS. JOSHI:

6 Q. Can you identify this document?

7 A. This is the Union's second proposal  
8 to us on sick leave dated April 12th, and the  
9 same employee group's covered.

10 Q. What was the Association's response  
11 on Paragraphs G and I?

12 A. So what they did is, if you look at  
13 Paragraph G, you can see red and blue in there.  
14 They combined what had been separate paragraphs  
15 into one paragraph, in Paragraph G. And then  
16 Paragraph I was the same proposal they made  
17 last time on -- from the TWU book.

18 Q. And did -- did the parties discuss  
19 the Association's proposal?

20 A. We did.

21 Q. And what was the discussion?

22 A. The discussion was that we would not  
23 enter into an agreement unless we had the  
24 ability to discipline people for sick leave  
25 usage. That -- in fact, that was taking place,

1 at that time, under the two policies. We were  
2 able to discipline people.

3 Now, granted, the Legacy US policy  
4 was different than the American policy in terms  
5 of when and how you discipline somebody, but we  
6 had a robust discussion about whether or not  
7 under each policy you could, in fact,  
8 discipline people.

9 And it was our -- it was our view,  
10 our position, that you could discipline under  
11 both policies under certain circumstances,  
12 especially on the Legacy American side, but  
13 that we certainly were never going to give up  
14 our right to discipline employees.

15 Q. And did you convey that the Company  
16 was, in fact, already applying the US Airways  
17 policies in that fashion?

18 A. Yes.

19 Q. Then, you testified earlier that you  
20 told the Union that the Company would not  
21 negotiate over its policies, and we heard  
22 testimony earlier today.

23 Were you in the room for  
24 Mr. Peterson's testimony?

25 A. I was.

1           Q.     Okay.  And in his testimony, he  
2           indicated that the parties agreed to -- that  
3           they agreed they would not negotiate over the  
4           policies, but that they would then arbitrate  
5           any disagreement over the policy.

6                     Was that what was discussed at the  
7           table?

8           A.     That never happened.

9                     I mean, look.  We -- we told the  
10          Union we were not going to negotiate over our  
11          policies.  To their credit, Tom Regan said,  
12          "We're not trying to negotiate over your  
13          policy."

14                    But there was never any discussion  
15          about us saying, "Well, if we disagreed, just  
16          we'll go to arbitration."  That -- that  
17          conversation never happened.

18          Q.     Thank you.  And looking at Paragraph  
19          I, in the Association's April 12th proposal,  
20          can you tell us what the proposal was there?

21          A.     In Paragraph I?

22          Q.     Yeah, in Paragraph I.

23          A.     The proposal was that it's a -- the  
24          sick leave benefit is -- it's there -- it's an  
25          insurance policy.  It's there to protect the

1 earnings of somebody who is out of work due to  
2 off-the-job illness or injury, and to help pay  
3 bills when they're out of work.

4 Q. And did the Association, in this  
5 proposal, agree to the Company's deletion of  
6 the reference to the 1969 American policy?

7 A. They did.

8 Q. Did Company agree to the Union's  
9 proposal in Paragraph G?

10 A. We did not.

11 Q. Directing your attention to Company  
12 Exhibit 10.

13 (Company Exhibit No. 10 was  
14 marked for identification.)

15 BY MS. JOSHI:

16 Q. Can you identify this document?

17 A. This is our second proposal. It's a  
18 counterproposal to the Union's proposal, dated  
19 April 12th. Paragraph G indicates our  
20 counterproposal on sick leave.

21 Q. And what was the Company's  
22 counterproposal?

23 A. Our counterproposal was to strike  
24 the sentence related to not disciplining  
25 somebody for sick leave usage, and to reinsert

1 the sentence that was in the IAM agreement that  
2 does say you are subject to discipline by the  
3 Company.

4 Q. And what did the Company -- well,  
5 did the Company explain to the Association, at  
6 the table, why it was striking the language  
7 that says, "The Company acknowledges the right  
8 of an employee to use his sick leave benefit  
9 for the purpose intended in this agreement.  
10 Accordingly, no employee will be disciplined  
11 for the use of his sick leave benefits for such  
12 purpose"?

13 A. Yes.

14 Q. And what did you tell the  
15 Association?

16 A. Told the Union -- we told the  
17 Association a couple things.

18 No. 1, that we were, in all  
19 likelihood, moving to the LUS Seymour policy  
20 for everybody. It would be a no-fault policy.

21 And, in fact, we were disciplining  
22 employees under both policies and we were not  
23 giving up any of our rights related to that.

24 Q. And what is a no-fault policy?

25 A. No-fault -- a no-fault policy is --

1 is pretty much what it says. If you -- if are  
2 out of work, it doesn't matter what the reason  
3 is, you get a point or an occurrence.

4 Q. And did the Association respond to  
5 the Company's April 14th proposal?

6 A. Yes.

7 Q. Let me direct your attention to  
8 Company Exhibit 11.

9 (Company Exhibit No. 11 was  
10 marked for identification.)

11 BY MS. JOSHI:

12 Q. Can you identify this document?

13 A. Yes. This is the Union -- this is  
14 the Association's third proposal to us. And in  
15 this proposal, they went back to the same  
16 proposal they made in Version 2.

17 Q. Okay. Let me direct your attention  
18 to Company Exhibit 12.

19 (Company Exhibit No. 12 was  
20 marked for identification.)

21 BY MS. JOSHI:

22 Q. Can you identify this document?

23 A. Yes. This is our third  
24 counterproposal. And in this proposal, we went  
25 back to our second proposal, same -- same exact

1 proposal.

2 Q. Did the parties ultimately agree to  
3 the language in G?

4 A. Yes.

5 Q. And let me direct your attention to  
6 Company Exhibit 13.

7 (Company Exhibit No. 13 was  
8 marked for identification.)

9 BY MS. JOSHI:

10 Q. Can you identify this document?

11 A. Yes. This is the signed version,  
12 the initial version of a tentative agreement  
13 dated April 21st of 2016.

14 Q. And just to direct your attention to  
15 paragraph G, what did the parties agree to in  
16 paragraph G?

17 A. They agreed to the Company's  
18 proposal and they dropped the -- the portions  
19 of the proposal that we found objectionable.

20 Q. Thank you.

21 Were you present for the first day  
22 of the hearing in this case?

23 A. I was.

24 Q. Okay. And did you hear the  
25 testimony given by the Association witness, Tom



1 Regan?

2 A. I did.

3 Q. Mr. Regan testified, this is a  
4 transcript 91, that, quote, "Every time we had  
5 a discussion at the table with my counterpart,  
6 most of the time it was Jerry, we always had a  
7 conversation concerning bona fide and  
8 legitimate use of sick leave from our  
9 perspective."

10 Can you explain what the  
11 conversations were that you had with Mr. Regan  
12 at the table on this point?

13 A. Sure.

14 I mean, what he said is accurate,  
15 that we did have discussions about bona fide  
16 uses of sick leave. We listened respectfully.  
17 It is my way of doing business, that if  
18 somebody wants to make a point, I will say I  
19 understand, and saying you understand is very  
20 different than saying you agree.

21 We did not agree, obviously.

22 Q. And if I can direct your attention  
23 to Company Exhibit 1.

24 A. Company Exhibit 1, okay. Yep, I got  
25 it.

1 Q. What is that -- can you identify  
2 that?

3 A. This is the cover page of the JCBA  
4 between American and the Association, covering  
5 the mechanic and related employees.

6 (Company Exhibit No. 1 was  
7 marked for identification.)

8 BY MS. JOSHI:

9 Q. Okay. And turning to Page 147 at  
10 the bottom, article 24G.

11 A. 147?

12 Q. 147. Yeah.

13 A. Okay.

14 Q. All right. And we just -- we just  
15 went through the proposals that resulted in  
16 this language; is that right?

17 A. Yes.

18 Q. Okay. And when the discussion  
19 regarding bona fide was occurring, what  
20 language in this paragraph was that  
21 referencing?

22 A. If you look in Line 34, so if we  
23 doubted that you had a legitimate claim, a bona  
24 fide claim, we could ask for a doctor's note.

25 Where we -- where the parties

1       differed, I believe, where at least I believe  
2       the Association is incorrect, they interpret  
3       this language to mean, if I have a bona fide  
4       claim, regardless of what it is, you can't  
5       discipline me for it.

6               And the -- and the words "bona fide"  
7       here only relate to us asking for a doctor's  
8       note. It has nothing to do whatsoever with  
9       whether or not we can discipline somebody for  
10      use of sick leave.

11             Q.     Thank you.

12               And -- and you mentioned that you  
13      told the Association that -- that the Company  
14      would be going to a -- a no-fault system, a  
15      points-based no-fault system?

16               At that time, did anyone at the  
17      Association state that the language in the CBA  
18      would not permit that or that the language that  
19      the parties had agreed to would not permit  
20      that?

21             A.     No. On the contrary, they -- they  
22      acknowledged that we could do it.

23             Q.     If you have the Union exhibits in  
24      front of you, if I could ask you to turn to  
25      Union Exhibit 19.

1           A.     Okay.

2           Q.     And these purport to be notes from  
3     April 14th, 2016.

4                     (Union Exhibit No. 19 was  
5     marked for identification.)

6     BY MS. JOSHI:

7           Q.     And if I can have you turn to  
8     Page 2.

9           A.     Yes, I have it.

10          Q.     Okay. Great. I'd like to just  
11     start where it's highlighted. Just to make  
12     sure we're all on the same page, I'll just read  
13     it.

14                     We have -- and this is, this is  
15     identified as something that you were saying:

16                     "We have today a discipline policy  
17     for attendance," quote, "and you're not saying  
18     we can."

19                     And then it says, J. Weel: "Defines  
20     ACP today if legitimate leave doesn't result in  
21     discipline; if not, we do discipline if  
22     abused."

23                     Tom R: "'69 policy can't  
24     discipline."

25                     J Glass: "We discipline on

1 the AA side today. Discipline for sick under  
2 our policies. We are not going to change."

3 Tom R: "That's fine but we  
4 won't be a scapegoat."

5 J Glass: "Not specific for this  
6 Company. Other companies expect you to come to  
7 work. We have medical leave and FMLA to use  
8 for legitimate issues."

9 Tom R: "'69 policy today passed  
10 history to protect our employees."

11 J Glass: "Your proposal, we can't  
12 discipline you."

13 Tom R: "If your policy is for  
14 discipline for abuse, we can talk about it.  
15 The way it is now, you can discipline for any."

16 J Weel: If are you legitimately  
17 using your sick time, we should not be  
18 disciplining you; if abuse is suspected, we can  
19 ask for substantiation."

20 Tom R: "You just said, 'we don't  
21 discipline for legitimate use.' So does LUS do  
22 it?"

23 And what is LUS?

24 A. Legacy US Airways.

25 Q. "What policy we use" --

1 J Glass: "No, we are discussing --

2 Tom R: "We have to find a way  
3 around it."

4 Can you just explain to us of what  
5 this discussion was?

6 A. Sure.

7 This was a discussion over the two  
8 policies that were in place and when we could  
9 or could not discipline.

10 Jim Weel was speaking about the  
11 Legacy American policy in which that policy was  
12 that if -- if you called in sick and we didn't  
13 suspect abuse, you would not be disciplined for  
14 that.

15 That was not the case at US Airways.  
16 I pointed out to Tom that under both policies,  
17 because he had said that under the Legacy  
18 American policy. We couldn't discipline. And  
19 we weren't disciplining. I was pointing out  
20 that was not accurate, that we were  
21 disciplining. If we suspected abuse on the  
22 Legacy American side, we did -- we did  
23 discipline.

24 And on the US Airways' side, we had  
25 an occurrence or points system in place and

1 that it was a no-fault policy and so we were --  
2 we were disciplining based on an accumulation  
3 of occurrences, and I think it's important to  
4 point that out.

5 We weren't disciplining -- if you  
6 called in sick, we didn't discipline you for  
7 one occurrence. It was an accumulation of  
8 occurrences over a 12-month period, so it was a  
9 fairly high bar to get to a point where you  
10 would actually be disciplined.

11 Q. Thank you.

12 And did -- the reference to a  
13 "Tom R," the way it is now, "you can discipline  
14 for any."

15 What was that referring to?

16 A. That was referring to the Legacy US  
17 policy.

18 Q. Okay. And your reference to, "We  
19 have medical leave and FMLA to use for  
20 legitimate issues," what were you referring to  
21 there?

22 A. So just like today, even under the  
23 policy today, it's been characterized that, you  
24 know, you can get to termination in four  
25 occurrences and that if you were out six days

1 or more, it's two points and all these  
2 horrendous things.

3 The fact of the matter is, that if  
4 you're out for any length of time, there is a  
5 reasonable, and I'd say maybe a highly likely  
6 probability, that you would be covered under  
7 either FMLA or you could be covered under  
8 medical leave, in which case the points or the  
9 occurrences did not apply.

10 So you would not -- you had this --  
11 my words nobody else's -- a "safe haven," so  
12 that if you were out for some period of time,  
13 whether it was some, you know, some kind of  
14 qualifying illness, you had medical leave or  
15 FMLA could go in under.

16 Q. Thank you.

17 And you may have already covered  
18 this. We heard testimony from Mr. Peterson  
19 today referring to Mr. Weel saying, "If you  
20 were legitimately using your sick time, we  
21 should not be disciplining you."

22 In the context of this conversation,  
23 what was Mr. Weel referring to?

24 A. He was referring to the Legacy  
25 American policy; not the Legacy US policy.



1 Q. Thank you.

2 I'd like to direct your attention to  
3 Union Exhibit 20, please.

4 (Union Exhibit No. 20 was  
5 marked for identification.)

6 BY MS. JOSHI:

7 Q. On pages 1 and 2, these purport to  
8 be notes from April 20th, 2016. And that first  
9 highlight there, second highlight there.

10 Tom R: "You indicated what control  
11 policy you're going to use."

12 J Glass: "Correct. No-fault  
13 control policy, Seymour 2010 policy."

14 And then turning to Page 2, same  
15 thing at the bottom of Page 2: TRG: "No  
16 employee will be disciplined, discussion on  
17 LUS."

18 Here it refers to JW: "Yes,  
19 no-fault occurrence based 7/2010 Seymour."

20 Can you explain what the party's  
21 discussion was there?

22 A. The party's discussion was that we  
23 were moving to the Legacy US Airways Attendance  
24 Control Policy and under that policy, it was a  
25 no-fault policy, meaning, if you had a doctor's

1 note, if you had another reason why you were  
2 out, that didn't factor into whether or not you  
3 got an occurrence or a point.

4 Q. Thank you.

5 And let me have you turn now to  
6 Union Exhibit 22.

7 Did you, in fact, send the LUS  
8 Attendance Control Policy, 2010, what's  
9 referred to as the Seymour policy, to  
10 Mr. Coveny and Mr. Regan?

11 A. I did.

12 Q. Okay. And taking a look at that --  
13 at that policy, turning to "Occurrences and  
14 leave," on Page 3, does that reflect what you  
15 just described as the -- with respect to a  
16 no-fault policy?

17 A. Yes, it does.

18 Q. Now, did you hear Mr. Regan's  
19 testimony regarding the -- what's been referred  
20 to as the Page 111 letter in the IAM mechanics  
21 and related contract?

22 A. I did.

23 Q. Okay. Let me have you now switch to  
24 the Company Exhibit book, and look at Company  
25 Exhibit 20, please.

1 A. 20?

2 Q. 20, yeah.

3 A. Okay.

4 Q. Turning -- can you identify this  
5 document?

6 A. This is the agreement between US  
7 Airways and the IAM, covering maintenance and  
8 related, as of -- well, originally it was 1995,  
9 but due to our two bankruptcies at US Airways,  
10 it was modified in September of '02, and then  
11 January of 2003.

12 Q. Thank you. And if you could turn to  
13 the last page of that exhibit, it should say  
14 Page 111 at the bottom?

15 A. Yes.

16 Q. I believe we heard testimony from  
17 Mr. Regan that this letter was eliminated from  
18 the -- the CBA.

19 Were you involved in negotiating the  
20 elimination of that letter?

21 A. I was in -- the short answer is yes.

22 I, as the executive VP, I was in  
23 charge of labor strategy. While I was  
24 occasionally at the table, most of the time I  
25 was not, but I directed Al Hemingway and Ron

1 Harbinson to negotiate the elimination of this  
2 letter.

3 Reason I did it is because we were  
4 having a terrible time with sick leave usage  
5 and sick leave abuse, and needed to eliminate  
6 this policy in order to try and get people to  
7 get to work.

8 Q. And you said eliminate this policy.  
9 Were you referring to the --

10 A. I'm sorry. Eliminate the letter.  
11 My apologies.

12 Q. And how did eliminating the letter  
13 enable what you just described?

14 A. So if you look at the second  
15 paragraph of the letter, it says, "It is not  
16 the intent of the Attendance Control Policy to  
17 discipline an employee for legitimate use of  
18 sick leave benefits."

19 And what we were trying to do and  
20 what we were going to do was go to a no-fault  
21 system, which is what we did, so that -- that  
22 letter needed to go away.

23 Q. Thank you.

24 We - we heard some testimony from  
25 Mr. Peterson, when I asked him about the

1 Association's proposals that purported to  
2 preclude the Company from changing its  
3 policies.

4 Are you familiar with those  
5 proposals?

6 A. Very much so.

7 Q. Okay. It occurs to me that we  
8 probably need to send those proposals to  
9 everyone else here.

10 MS. JOSHI: Lorenzo, can I  
11 please ask you to send the proposals to  
12 Arbitrator Weinstock and to Christina?

13 MS. GORNAIL: Wait. You're  
14 talking about a new exhibit?

15 MS. JOSHI: Yes, a new  
16 exhibit.

17 MS. GORNAIL: May I have some  
18 time to review it before you --

19 MS. JOSHI: Yeah, of course.

20 MS. GORNAIL: -- before you  
21 question anybody about it?

22 MS. JOSHI: Of course.

23 ARBITRATOR WEINSTOCK: And  
24 this is -- let's go off the record for a  
25 minute, please.

1 (A recess was taken.)

2 ARBITRATOR WEINSTOCK: Thank  
3 you. During that break, the Company provided  
4 the Union, and me, and presumably the board  
5 members with copies of Company Exhibits 27, 28,  
6 29, and the Union was afforded an opportunity  
7 the review those.

8 So let's go back, Ms. Joshi, to your  
9 direct examination of Mr. Glass.

10 MS. JOSHI: Thank you.

11 BY MS. JOSHI:

12 Q. Mr. Glass, I'd like to direct your  
13 attention to what we've marked as Company  
14 Exhibit 28.

15 And ask if you can identify that  
16 exhibit. And I will -- I will note that these  
17 are excerpts.

18 So if you can identify the exhibit?

19 A. This is the Union's first proposal  
20 on general and miscellaneous.

21 Q. Okay. And if you could look through  
22 the rest of the packet and just identify,  
23 generally, what -- what are these?

24 A. These are Union and Company  
25 proposals on general and miscellaneous.

1 Q. And the -- are they, in fact,  
2 excerpts, to your recollection?

3 A. Yeah. Yes, they are because general  
4 miscellaneous was quite lengthy.

5 Q. I don't want to go through these,  
6 you know, as a page turn, but looking at the  
7 Union's -- the first proposal we have on  
8 January 10th, 2017, going to Paragraph C, what  
9 -- what was the Union proposing here?

10 A. The Union was proposing that  
11 whenever we had a provision regarding Company  
12 policy, that as of the date of signing the  
13 agreement, that policy would not be changed --  
14 could not be changed by the Company  
15 unilaterally unless it was mutually agreed to  
16 by the Company and the Union or it was required  
17 by law to make the change.

18 And that, you know, the Union  
19 proposed it. We rejected it. Union proposed  
20 it. We rejected it.

21 This went on and on and on until the  
22 very end of negotiation.

23 Q. And, ultimately, if I can direct  
24 your attention to the tentative agreement,  
25 which will be three pages from the end of the

1 exhibit.

2 A. Yes.

3 Q. Dated February 20, 2020.

4 A. Uh-huh.

5 Q. Looking at the TA, did the parties  
6 ultimately agree to the Union's proposed  
7 language in Paragraph C?

8 A. No. It was rejected and the Union  
9 agreed to keep it out.

10 Q. Okay. Thank you. I'd like now to  
11 turn to the fleet side.

12 ARBITRATOR WEINSTOCK: Can we  
13 go off the record for one moment before that  
14 question?

15 MS. JOSHI: Sure.

16 (A recess was taken.)

17 ARBITRATOR WEINSTOCK: Back on  
18 the record.

19 Ms. Joshi, go ahead.

20 BY MS. JOSHI:

21 Q. Okay. Let's turn to the fleet side,  
22 and can I ask you, Mr. Glass, if you could just  
23 describe for us, overall, how the negotiations  
24 proceeded on the fleet side with respect to the  
25 sick leave provisions that we've been



1 discussing?

2 A. So initially, the Association  
3 presented on the fleet side the same proposals  
4 or similar proposals that were made on the  
5 mechanic and related side. But we reached a  
6 tentative agreement on the mechanic and related  
7 side prior to the conclusion of the sick leave  
8 negotiations on the fleet service side.

9 And once we completed negotiations  
10 and reached a tentative agreement on the  
11 mechanic side, the fleet service language fell  
12 into line and was consistent with what we  
13 agreed to on the mechanic side.

14 Q. Thank you. Let's take a look at the  
15 proposals if we could.

16 Can I direct your attention to  
17 Company Exhibit 15, please.

18 A. Okay.

19 (Company Exhibit No. 15 was  
20 marked for identification.)

21 BY MS. JOSHI:

22 Q. Can you identify that document?

23 A. This is the Association fleet  
24 proposal, the first one they made on April  
25 14th, and oh, boy, this is where I always slip

1 up.

2 The IAM language was the plain,  
3 regular font, the TWU language was the italic  
4 font, and new language was in bold.

5 Q. Thank you.

6 A. Whew.

7 Q. And directing your attention to  
8 Paragraph E, what was the Association's  
9 proposal in Paragraph E, of Company Exhibit 15?

10 A. They proposed, in essence, that we  
11 can't discipline somebody for sick leave use.

12 Q. And was this the same proposal they  
13 had made at the mechanics and related table?

14 A. Yes.

15 Q. Did you participate in a discussion  
16 at the table with the Association regarding its  
17 proposal on April 14th, at the fleet table?

18 A. I did.

19 Q. And what did the parties say?

20 A. Again, same exact conversation that  
21 I had at the mechanic table, that we discipline  
22 people today. We were not going to enter into  
23 an agreement that didn't allow the Company to  
24 discipline employees for sick usage for  
25 occurrences, serious occurrences of sick use.

1 Same exact conversation.

2 Q. Thank you. Directing your attention  
3 now to Company Exhibit 16.

4 (Company Exhibit No. 16 was  
5 marked for identification.)

6 BY MS. JOSHI:

7 Q. Could you identify that document?

8 A. This is the Company's  
9 counterproposal to the Union's first proposal  
10 on sick leave.

11 Q. And directing your attention to  
12 Paragraph F.

13 A. Same exact response that we made on  
14 the maintenance side. We've deleted the  
15 portion of the old TWU language that said we  
16 couldn't discipline somebody for sick usage and  
17 inserted the IAM language that spoke to our  
18 ability to discipline people for abuse of sick  
19 leave.

20 Q. And looking at the date here, had a  
21 TA already been reached at the -- on the  
22 mechanics and related side?

23 A. Yes.

24 Q. And did you discuss this proposal  
25 with the Association on the fleet side?

1           A.     Yes.

2           Q.     What did you say?

3           A.     I said we had already reached an  
4 agreement with the association on the mechanics  
5 side, language was different, and we would not  
6 agree to language that was not the same for  
7 both.

8           Q.     Thank you.

9                     Directing your attention to Company  
10 Exhibit 17.

11          A.     Okay.

12                     (Company Exhibit No. 17 was  
13 marked for identification.)

14 BY MS. JOSHI:

15          Q.     Okay.  Actually let me draw your  
16 attention to Company Exhibit 18.

17                     (Company Exhibit No. 18 was  
18 marked for identification.)

19 BY MS. JOSHI:

20          Q.     Can you identify this document?

21          A.     This is the Union's counterproposal  
22 to our second proposal dated April 27th, same  
23 day, I believe, or maybe the day after.

24          Q.     Okay.  And what changes did the  
25 Union propose -- did the Association propose to

1 paragraph F?

2 A. They proposed the IAM language that  
3 we had TA'd with the Association on the  
4 mechanic side.

5 Q. Thank you. Directing your attention  
6 to Company Exhibit 19.

7 (Company Exhibit No. 19 was  
8 marked for identification.)

9 BY MS. JOSHI:

10 Q. Can you identify this document?

11 A. This is a tentative agreement  
12 reached between the parties. The one thing  
13 I'll note, it's dated February 13, 2018, or two  
14 years after we actually reached agreement on  
15 paragraph F.

16 There were some unrelated changes  
17 that we made later on in this section that  
18 necessitated a change to the tentative  
19 agreement.

20 Q. Thank you. I'd like to now have you  
21 go back to Company Exhibit 17 and ask if you  
22 can identify that document.

23 A. Company Exhibit 17 is the Attendance  
24 Control Policy for passenger service and the  
25 fleet service employee.

1           Q.     All right.  And was this the fleet  
2 passenger service and fleet service Attendance  
3 Control Policy that was in effect at the time  
4 of the negotiations?

5           A.     Yes.

6           Q.     Thank you.

7                     I'd like to ask you about some of  
8 the testimony that we heard on the fleet  
9 negotiations.

10                    Were you present for Mr. Sutton's  
11 testimony regarding the fleet negotiations?

12           A.     Yes.

13           Q.     Okay.  And Mr. -- one second.

14                    Mr. Sutton testified, and this is at  
15 Transcript 115, that the Union was, quote,  
16 "Trying to mirror language that was in the  
17 other room and we were trying to get to a point  
18 where there was some protection for the members  
19 and that would be under the bona fide illness,  
20 because there was an understanding that the  
21 Company could bring into question that they  
22 suspected abuse, so, therefore, they had an  
23 avenue to pursue that.

24                    "What we'd been speaking about in  
25 our room was identifying the folks that come to

1 work every day but may become ill. If they had  
2 a bona fide illness, there would be some  
3 protections under the sick leave article."

4 First, was that what was agreed to  
5 of the maintenance and related table?

6 A. No.

7 Q. And was the, quote, "protection  
8 under the bona fide illness language" discussed  
9 and agreed to at the fleet table?

10 A. No.

11 Q. Did you have any discussions or  
12 agreement at the fleet table that altered the  
13 agreement you had reached at the maintenance  
14 and related table?

15 A. No.

16 MS. JOSHI: Nothing further  
17 for this witness at this time.

18 MS. GORNAIL: Can I have a  
19 short five minutes?

20 ARBITRATOR WEINSTOCK: Okay.  
21 Let's take a five-minute break.

22 Once again, Mr. Glass, you just  
23 can't discuss your testimony with anyone. You  
24 need me to open the breakout room -- we're off  
25 the record, please.

1 (A recess was taken.)

2 ARBITRATOR WEINSTOCK: Thank  
3 you to the Union for making that an abbreviated  
4 break and we're ready for their  
5 cross-examination of Mr. Glass.

6 CROSS-EXAMINATION

7 BY MS. GORNAIL:

8 Q. Good afternoon, Mr. Glass. I just  
9 have a few questions for you.

10 So No. 1, there -- you spoke about  
11 medical leave, and I just want to understand.  
12 For medical leave at American Airlines, it's at  
13 Company discretion; correct?

14 A. I'd have to look -- I'd have to look  
15 at the contract.

16 Q. Okay. That's fine.

17 Do you also know whether it is only  
18 granted for an absence of four or more days?

19 A. Again, happy to look at the  
20 language.

21 Q. That's fine.

22 Okay. Now there was some -- you  
23 heard some testimony about Mr. Peterson's  
24 testimony about whether you could arbitrate  
25 issues?



1 I couldn't paraphrase it very well,  
2 but in reality here, under the way the  
3 attendance program works, if there is a  
4 disagreement, an employee -- the Union can  
5 grieve whether there's just cause to terminate,  
6 right, or to discipline?

7 A. Yes.

8 Q. And so the Union can also take that  
9 to arbitration, the issue about whether it has  
10 just cause? Yes?

11 A. Yes.

12 Q. Okay. The Union can also, just as  
13 its done here, grieve whether it disagrees with  
14 the policy?

15 A. Yes. My point was that there was no  
16 discussion or agreement at the table that  
17 that's what we -- we would encourage the Union  
18 to file a grievance. But we don't do that.

19 ARBITRATOR WEINSTOCK: Just  
20 one moment, please. Off the record for a  
21 second.

22 (A recess was taken.)

23 ARBITRATOR WEINSTOCK: Would  
24 you like the reporter to read what she has as  
25 your response to make sure we have it all?

1 THE WITNESS: Yeah.

2 (Reporter read back from the  
3 record.)

4 THE WITNESS: Yeah. Nothing  
5 else to add.

6 ARBITRATOR WEINSTOCK: Thank  
7 you.

8 BY MS. GORNAIL:

9 Q. Okay. I'm going to take you to  
10 Union Exhibit 20, Exhibit Page 1.

11 A. Okay.

12 Q. Okay. So this was on April 20th,  
13 20-- 2016. So shortly -- the day before the  
14 TA was reached on the maintenance side, right?

15 A. Yes.

16 Q. Okay. So I'm just going to direct  
17 you to the highlighted portion, a few lines  
18 down in Exhibit Page 1, where it was -- which  
19 you already read before but it says:

20 "You indicated what control  
21 policy you're going to" --

22 J Glass: Correct. No-fault  
23 control policy, Seymour 2010 policy."

24 And so you were referring to the  
25 Seymour policy as the no-fault control policy;

1 correct?

2 A. That's correct.

3 Q. Okay. And so that -- the next day,  
4 directing you to Exhibit 22, you sent over  
5 the -- the Seymour, what you're referring to as  
6 the no-fault policy to the Union to support  
7 what you were discussing at the table; correct?

8 A. I think I sent it at the request of  
9 the Association.

10 Q. Okay. Just to be clear, and you can  
11 look at it if you want to but the Company  
12 Exhibit 17, the fleet passenger service for  
13 fleet employees, their former attendance  
14 program was not ever sent over on the  
15 maintenance side during these April  
16 negotiations, correct?

17 A. No, it was never. It was never  
18 requested.

19 Q. Okay.

20 A. I mean, in both cases, the  
21 Association had both copies and knowledge of  
22 the two policies because there were members of  
23 their committees who were employees of the  
24 Company, No. 1, would have access to the  
25 policies through the internet; and No. 2, they

1 were aware of those policies.

2 Q. Right. Okay. That's my -- but I  
3 have a narrower question. Just, the notes  
4 reflect that you sent over a policy, which I  
5 just want to be clear. On the maintenance  
6 side, you only sent over the maintenance policy  
7 that was requested in Union 22?

8 A. That's correct.

9 Q. Thank you.

10 And then I know you had some  
11 testimony on a no-fault, this being a no-fault  
12 attendance policy, the Seymour policy.

13 Can I direct you to Exhibit Page 7  
14 on Union Exhibit 22, and specifically 7 through  
15 8 which says, "Attendance Controls Numerical  
16 Standards"?

17 A. Yes. Yes, I have it.

18 Q. Okay. Do you see throughout the  
19 progression from verbal warning, written  
20 warning, final written, suspension warning, and  
21 termination, where it says "may" occur?

22 A. Yes.

23 Q. Okay. So in the -- under the 2010  
24 policy, there wasn't an automatic -- someone  
25 would automatically be disciplined? The words

1 were "may be disciplined"?

2 A. Yes, that, but the answer is, they  
3 were automatically disciplined unless there was  
4 some kind of compelling or extenuating  
5 circumstances that they -- for them not to --  
6 not to move up a step or get an occurrence or a  
7 point but it was automatic.

8 Q. Okay. And just so I'm clear -- you  
9 talked about your timing and I didn't write it  
10 down.

11 So in 2010 when this policy went  
12 into effect, were you still working at US  
13 Airways or were you back at F&H Solutions?

14 A. I was at F&H Solutions Group.  
15 American was and continues to be my most  
16 important client, even back then I was working  
17 on negotiations and other things.

18 Q. Okay. But in 2010, you weren't  
19 responsible for the day-to-day -- or I don't  
20 know if you -- were you ever responsible for  
21 the day-to-day operations of this policy, like,  
22 on the -- on the ground?

23 A. No. There were other people in the  
24 department that had that day-to-day  
25 responsibility.

1 Q. Okay. And under the policy that's  
2 in effect today, there is an automatic  
3 progression of discipline, correct, as you move  
4 up in points?

5 A. Yes. There is, but like the old  
6 policy, the Company always has the discretion  
7 to make an exception and I think you'll hear  
8 from others that those exceptions have and  
9 continue to be made.

10 Q. Okay.

11 MS. GORNAIL: I have nothing  
12 further. Thank you.

13 ARBITRATOR WEINSTOCK: One  
14 moment, please.

15 Any redirect?

16 I'm asking to be polite only.

17 MS. JOSHI: And I'm answering  
18 as direct, yeah, no redirect. Thank you.

19 ARBITRATOR WEINSTOCK: Okay.

20 Excellent.

21 Mr. Glass, your testimony is  
22 concluded. Now, you can caucus with the team  
23 if you wish.

24 Let's go off the record for a  
25 moment.

1 (A recess was taken.)

2 ARBITRATOR WEINSTOCK: The  
3 Company has called Ron Harbinson as the next  
4 witness. Mr. Harbinson, you know the drill.

5 If you'll please raise your right  
6 hand.

7 RONALD HARBINSON, a witness  
8 herein, having been first duly sworn, was  
9 examined and testified as follows:

10 ARBITRATOR WEINSTOCK: Thank  
11 you. Ms. Joshi, whenever you're ready.

12 MS. JOSHI: Thank you.

13 DIRECT EXAMINATION

14 BY MS. JOSHI:

15 Q. Mr. Harbinson, I just want to  
16 confirm that you have a binder of Company  
17 exhibits and Union exhibits in front of you?

18 A. I do beside me.

19 Q. Okay. Great. Fair enough. Fair  
20 enough. All right.

21 MS. JOSHI: And, Ms. Repsik,  
22 just let me know if I'm trailing off at the end  
23 of my of my questions or anything like that, if  
24 you have any trouble hearing me. I've tried to  
25 adjust the microphone again so I'll avoid

1 interference there.

2 BY MS. JOSHI:

3 Q. Mr. Harbinson, are you currently --  
4 actually, let me start with this.

5 Can you please state and spell your  
6 name for the record?

7 A. Ron Harbinson. Last name is  
8 H-A-R-B, as in boy, I-N-S-O-N.

9 Q. And are you currently employed?

10 A. I'm not. I'm retired.

11 Q. Where did you work prior to your  
12 retirement?

13 A. American Airlines, and prior to the  
14 merger, at US Airways.

15 Q. Can you tell us what positions you  
16 held at US Airways and American -- yes, US  
17 Airways and American, and for how long?

18 A. Okay. Well, I started in 1967, when  
19 it was named Allegheny Airlines, and I was a  
20 baggage handler and handled all the positions  
21 in the airport including ticket counter and  
22 gates, ramp.

23 In the mid '80s I became a passenger  
24 service supervisor and stayed in that until  
25 '89, and after the merger with US Airways, or



1 US Air at the time, I went to Charlotte, the  
2 hub, as the manager of administration, and I  
3 was manager of administration.

4 It was for the customer service  
5 department, and I was responsible for hiring,  
6 firing, training of personnel, work schedules,  
7 vacations, payroll, and attendance control for  
8 the passenger service and fleet service  
9 employees.

10 And then in the '90s, when the IAM  
11 voted in for fleet service employees I was on  
12 the Company negotiating team representing the  
13 customer service department for the '99  
14 collective bargaining agreement for fleet  
15 service, and also passenger service voted in  
16 the CWA.

17 And I was on the Company negotiating  
18 team representing the customer service  
19 department for that collective bargaining  
20 agreement.

21 And then after the 2001 bankruptcy,  
22 I was on the Company team for the concessionary  
23 bargaining. And then in the second bankruptcy,  
24 in '04, they convinced me to take a permanent  
25 job in labor and so I moved to labor relations

1 in the end of '04, and stayed there until I  
2 retired May 2nd, of 2014.

3 Q. And what was your position in labor  
4 relations?

5 A. I was a managing director of the  
6 ground groups. So I was responsible for  
7 negotiating administration of the CBAs for the  
8 mechanics and related and fleet service  
9 employees and the passenger service employees.

10 Q. And in that -- in that role in labor  
11 relations did you have any responsibility or  
12 involvement in the Attendance Control Policy?

13 A. Yes. The managers in the field  
14 would come to labor relations to -- for  
15 questions about the application of the policy.

16 Q. Thank you. I'd like to direct your  
17 attention to Company Exhibit 20, please.

18 A. Okay.

19 Q. And I'm going to ask if you can turn  
20 to the last page of that exhibit?

21 A. Page 110 to 111?

22 Q. Yes, exactly.

23 And looking at Page 111, are you  
24 familiar with this letter at the top that says,  
25 "Re: Attendance control program intent"?

1           A.     I am.

2           Q.     Were you -- and what -- what is the  
3     date of this letter?

4           A.     January 10th, 1988.

5           Q.     Were you involved in negotiating it?

6           A.     I was not.

7           Q.     Were you involved in the application  
8     of this letter while you were in labor  
9     relations?

10          A.     Yes. While I was in labor relations  
11     when I first got to labor relations this letter  
12     was still in the CBA and still had effect, and  
13     so it was still applied under the 2004  
14     Attendance Control Policy for the mechanic and  
15     related group, so I was involved in the  
16     application of that policy as far as the  
17     manager --

18          Q.     I'm sorry. I didn't mean to cut you  
19     off. What was the last part of your --

20          A.     As far as advising management in the  
21     field on the application.

22          Q.     Thank you.

23                     Let me direct your attention to  
24     Company Exhibit 21, please, and ask if you can  
25     identify that document.

1           A.     21 is the maintenance operation and  
2 Attendance Control Policy that was put into  
3 effect in February 2004.

4                     (Company Exhibit No. 21 was  
5 marked for identification.)

6 BY MS. JOSHI:

7           Q.     And is that the policy you were just  
8 referring to?

9           A.     It is. That is the policy that was  
10 in effect when I got to labor relations.

11          Q.     Directing your attention to Page 3  
12 of that policy, can you explain how the policy  
13 treated absences when it comes to sick leave  
14 and, in particular, I'm looking under  
15 "Legitimate use of sick leave"?

16          A.     It's if the absence fell under the  
17 legitimate use of sick leave provision, which  
18 was sick leave -- sick leave that was covered  
19 by a doctor's note.

20          Q.     And I'm sorry, Ron. I apologize to  
21 interrupt, if you can speak into your  
22 microphone a little bit? I'm having a little  
23 trouble hearing you and I think Ms. Repsik may  
24 be as well.

25          A.     Okay. With legitimate use of sick

1 leave sections outlined what was considered a  
2 legitimate use of sick leave and it would not  
3 be used for -- as an attendance occurrence  
4 under the policy, and it was paid sick leave by  
5 means of a bona fide physician certificate.

6 It was sick leave that Company had  
7 specific knowledge of the incapacitating  
8 illness or injury, or if it was an authorized  
9 leave under the Family Medical Leave Act.

10 Q. Thank you. And what was the  
11 interaction, or what impact did the Page 111  
12 letter that we just looked at -- looked at,  
13 have on the -- the Company's application of  
14 this policy?

15 A. Well, the 111 letter is the reason a  
16 legitimate use of sick leave is in the policy.  
17 The 111 letter is a subsequent arbitration  
18 award.

19 Q. Did the parties subsequently agree  
20 to eliminate that letter?

21 A. We did.

22 Q. And can you explain the context for  
23 that elimination?

24 A. It was after the second bankruptcy,  
25 during the bargaining agreement --

1 concessionary bargaining.

2 Q. Were you personally involved in  
3 those negotiations?

4 A. I was.

5 Q. Can you tell us who else  
6 participated in those negotiations, both for  
7 the Company and for the IAM?

8 A. To the best of my recollection,  
9 Jerry Glass was at some of the meetings but not  
10 all. Al Hemingway was at all of them. Of  
11 course, I was at them. John Prestifilippo,  
12 head of maintenance, was at some of them. Tom  
13 McMullen from maintenance was at all of them.

14 On the Union side it was Bill  
15 Freiburger was kind of their chief  
16 spokesperson.

17 Tom Regan, Tony Giamarco, Bill  
18 O'Driskoll, who was the president of District  
19 142 was at some of them.

20 BY MS. JOSHI:

21 Q. Thank you. Let me direct your  
22 attention now to Company Exhibit 23.

23 A. Okay.

24 (Company Exhibit No. 23 was  
25 marked for identification.)

1 BY MS. JOSHI:

2 Q. Are you familiar with this document?

3 And I will say that these are  
4 excerpts.

5 A. This is excerpts from the January  
6 31st, 2005, collective bargaining agreement.

7 Q. And let me have you turn to the last  
8 page of that exhibit, Page 237, at the bottom.

9 A. Yes.

10 Q. Does this, under "Vacation, sick  
11 leave, and holidays," does that reflect the  
12 party's agreement to eliminate the Page 111  
13 letter?

14 A. Yes. The last bullet point under  
15 that section, "The attendance control program  
16 content letter on Page 111, of the CBA, will be  
17 eliminated."

18 Q. And can you tell us what discussions  
19 did the Company have with the IAM regarding why  
20 the Company would be eliminating the Page 111  
21 letter?

22 A. Because the maintenance department  
23 said they had reliability issues and they  
24 needed to get the attendance under control and  
25 it was too easy for employees to bring in a

1 doctor's note just to have the absence excused.  
2 So they wanted to get rid of the letter and  
3 make it more closely aligned to what the other  
4 ground groups of fleet service and passenger  
5 service.

6 Q. Thank you.

7 If I could ask you now to turn to  
8 Company Exhibit 29.

9 (Company Exhibit No. 29 was  
10 marked for identification.)

11 THE WITNESS: 29.

12 BY MS. JOSHI:

13 Q. That will be a series of e-mails. I  
14 guess I should say, what we'll mark as Company  
15 Exhibit 29.

16 A. Okay.

17 Q. Can you identify this document or  
18 this exhibit?

19 A. Company 29 is a series of internal  
20 E-mails between Al Hemingway, mechanic  
21 leadership and there's four E-mails.

22 Q. Looking at the first page, which is  
23 dated February 7th, 2005 at 5:17 p.m., can you  
24 identify what Mr. Hemingway is -- or can you  
25 just identify this E-mail?



1           A.       Yeah. This was an E-mail from Al to  
2 Tom McMullen, who was in charge of the  
3 maintenance department, along with John  
4 Prestifilippo and also copied in was me, John  
5 Hedblom, who was the VP of HR and Rob McKinley  
6 in HR, and it was about the implications of  
7 removing the letter, the attendance control  
8 letter on Page 111 and how that would be  
9 applied going forward.

10           Q.       And what did Ms. --

11           A.       The second paragraph, it will  
12 explain that since the letter was eliminated,  
13 doctors notes would no longer be excused  
14 absences and effective January 31st of 2005,  
15 all absences, whether or not a doctor's note  
16 was provided, would count as an occurrence  
17 under the attendance control program, except  
18 for under FMLA.

19                   And then the last paragraph says,  
20 you know, the Company still has the ability to  
21 modify the attendance control program; and if  
22 there's any further changes, they'll let them  
23 know.

24           Q.       And the second paragraph, is that  
25 consistent with your recollection of the

1 negotiations regarding elimination of the  
2 proposal -- of the letter?

3 A. Yes, it is.

4 Q. Directing your attention to the next  
5 page, can you identify what should be -- let me  
6 make sure everybody is looking at the same  
7 thing -- which should be an E-mail dated  
8 February 11, 2005 at 10:49 a.m.

9 Can you identify that --

10 A. Yes.

11 Q. -- document?

12 A. This is an E-mail that was initially  
13 sent from Ken Massingill, who was a manager in  
14 the maintenance department in stores and  
15 indicated that they had been getting questions  
16 from Union personnel, why they haven't seen  
17 anything in writing about the change to the  
18 attendance policy.

19 And then so Al took that E-mail and  
20 forwarded it to me to draft a letter for him to  
21 sign saying we don't need to notify the Union  
22 because we bargained it. But it wouldn't hurt  
23 to tell them what we were going to do going  
24 forward.

25 Q. And then can you can you identify

1 the next E-mail?

2 A. The 2005 at 10:51?

3 Q. Correct?

4 A. Yeah, that's Al -- then after he  
5 asked me to write a letter, he responded to Ken  
6 Massingill telling him that, you know, we'll  
7 write a letter that we bargained this and we  
8 don't view it as something we have to tell them  
9 but just in case there's any confusion, that we  
10 would write them a letter.

11 Q. And did you, in fact, draft the  
12 letter to Mr. Freiburger?

13 A. I did.

14 Q. I guess just to finish off this  
15 exhibit, can you turn to the last E-mail in the  
16 exhibit?

17 A. March 30, 2006?

18 Q. Correct.

19 A. Yeah. This is approximately a year  
20 later. I received an E-mail from Tim Everhart  
21 saying he needed a clean copy of the letter  
22 that Al Hemingway had sent to the IAM chairman,  
23 that the copy he had been faxed so many times,  
24 it was almost illegible.

25 And since I had drafted the letter,

1 I had it on my computer so I just faxed the  
2 Word copy that I had on my computer and sent it  
3 to him.

4 Q. Thank you.

5 Let me direct your attention now to  
6 Company Exhibit 22.

7 (Company Exhibit No. 22 was  
8 marked for identification.)

9 BY MS. JOSHI:

10 Q. Can you identify this document?

11 A. This is the letter that I drafted  
12 and went to Al, who signed it, sent it to Bill  
13 Freiberger.

14 Q. And does this letter provide that  
15 all sick absences will be counted as  
16 occurrences?

17 A. It does. In the second paragraph,  
18 he advises Bill that, "As of January 31st, all  
19 sick absences will count as occurrences if  
20 they're not protected under FMLA."

21 And the third paragraph, he goes on  
22 to say that, "Providing an existing certificate  
23 for an absence will no longer be considered  
24 legitimate use of sick leave and, therefore,  
25 the absence will be based on occurrence.

1                   "However, we still have the right to  
2 request physicians certificate if in doubt of  
3 bona fide claim."

4           Q.       Thank you.

5                   Did you personally contact  
6 Mr. Freiberger regarding the letter?

7           A.       I did. As was the custom back then,  
8 if we were going to send him something, we  
9 would contact the Union. I'll let them know,  
10 you know, what all was coming.

11                   So I called Bill and outlined what  
12 was in the letter that he would be receiving  
13 and just to give him a heads-up.

14           Q.       Did Mr. Freiberger object?

15           A.       Well -- not at all.

16           Q.       Thank you.

17                   Following the removal of the Page  
18 111 letter, can you explain how the Company  
19 applied the M&R and Attendance Control Policy  
20 to sick leave absences?

21           A.       All sick leave absences, whether  
22 paid or unpaid and whether a doctor's note or  
23 not, were considered attendance occurrences.

24           Q.       And could or did sick leave absences  
25 with a doctor's note count in the context of

1 potential progressive discipline under the  
2 policy following removal of the letter?

3 A. Yes. Under the policy, there were  
4 different thresholds for discipline counseling  
5 and discipline, and you know, it was basically  
6 a, kind of like a no-fault policy.

7 If you met a certain threshold, then  
8 either you're counseled or discipline was  
9 applied unless there were extenuating  
10 circumstances.

11 But all occurrences, whether in all  
12 sick absences, whether paid or unpaid, whether  
13 doctor's note or not, were counted as an  
14 attendance occurrence.

15 Q. Thank you.

16 While you were in labor relations,  
17 did the IAM ever grieve that application?

18 A. They did not.

19 Q. I'd like to ask you about some  
20 testimony we heard on the first day of the  
21 hearing.

22 Were you present for the first day  
23 of the hearing?

24 A. I was.

25 Q. Did you hear testimony from Tom

1 Regan?

2 A. I did.

3 Q. And Mr. Regan testified and this is  
4 at transcript Page 75, that quote, "In  
5 administering the contract going forward, I  
6 don't recall any differences that affected the  
7 bona fide language by a removal of the LOA that  
8 was agreed to in January of '88."

9 Is that consistent with your  
10 recollection?

11 A. Well, as far as the bona fide  
12 language goes, that is consistent. We did not  
13 change the bona fide language. The bona fide  
14 language only applied to the Company being able  
15 to request a physician certificate if we were  
16 in doubt of the claim.

17 What did change, however, was that  
18 whether or not they provided a doctor's note,  
19 it counted as an attendance occurrence.

20 Q. If I can have you turn to Company  
21 Exhibit 5.

22 (Company Exhibit No. 5 was  
23 marked for identification.)

24 THE WITNESS: 2014.

25 BY MS. JOSHI:

1 Q. 2014. Actually, let me direct you  
2 to an earlier version. Let me direct your  
3 attention, I'm sorry, to Company Exhibit 23.

4 A. January of '05?

5 Q. Correct. Can you identify that?

6 A. That's excerpts from the January 31,  
7 2005 mechanic and related agreement.

8 Q. And we just looked at this with  
9 respect to the elimination of the letter. I'd  
10 like to direct your attention to the second  
11 page of the exhibit, Page 59 at the bottom.

12 A. Okay.

13 Q. That paragraph F, do you see that?

14 A. I do.

15 Q. Is the last sentence of that  
16 paragraph stating, "Employees who abuse sick  
17 leave privileges may be subject to disciplinary  
18 action by the Company," was that applied by the  
19 Company to mean that it could not discipline  
20 for an accumulation of sick occurrences that  
21 were accompanied by a doctor's note?

22 A. No, it was not. Sick occurrences,  
23 as I said before, paid or unpaid, were  
24 occurrences under the -- once we eliminated the  
25 letter and they counted towards, you know,



1 any -- could count towards discipline if they  
2 reached thresholds.

3 Q. Thank you.

4 I'd like now to direct your  
5 attention to Company Exhibit 14.

6 (Company Exhibit No. 14 was  
7 marked for identification.)

8 THE WITNESS: 310 policy?

9 BY MS. JOSHI:

10 Q. Correct.

11 Are you familiar with this policy?

12 A. I am.

13 Q. And were you involved in the  
14 application of it while you were in labor  
15 relations?

16 A. I was.

17 Q. Under this policy -- so we talked  
18 about the 2004 policy -- under this policy, can  
19 you explain how the Company treated sick  
20 absences?

21 A. Yes. If you go to Page 3, under  
22 "Occurrences," it says, "the following  
23 occurrences are considered to be a single  
24 absence or an absence that covers consecutive  
25 workdays," and then it lists what those are.

1           "That leave early, quit, or no-show,  
2           or for any sick leave not meeting the Company  
3           definition of authorized leaves defined below."

4           So if they were out sick, they were  
5           unpaid, and didn't meet the definition of an  
6           authorized leave, it counted as an occurrence.

7           Q.     And did this 2010 policy include the  
8           section on legitimate use of sick leave that we  
9           saw in the 2004 policy?

10          A.     It did not.

11          Q.     And why not?

12          A.     Because we eliminated that with the  
13          elimination of the Page 111 letter in the 2005  
14          change provision.

15          Q.     Thank you. Now, was there -- well,  
16          we've already looked at this, but let me direct  
17          your attention now to Company Exhibit 17.

18          A.     "Attendance and conformance program  
19          for passenger service and fleet service  
20          employees."

21          Q.     Correct. Were you, while you were  
22          managing director of labor relations, were you  
23          involved in the application of this policy?

24          A.     I was.

25          Q.     And did the fleet CBA include a

1 similar letter to the maintenance and related  
2 Page 111 letter?

3 A. They did not, but fleet service -- a  
4 sick occurrence, whether paid or unpaid  
5 doctor's note or not, had always been an  
6 attendance occurrence.

7 Q. And looking at this -- at this  
8 policy on Pages 6, and 7, can you explain to us  
9 how sick leave, with or without a doctor's  
10 note, was treated under this fleet policy?

11 A. Yes. Under the fleet policy, you  
12 were assigned points. Rather than counting  
13 occurrences we just changed it to a point  
14 system.

15 And if you look at Page 7, it says,  
16 "Absence regarding sickness." The second  
17 bullet point or second point on this chart is  
18 one point, and then there's other absences for  
19 employees' child sickness is one point, more  
20 than 120 minutes late but permitted to work,  
21 two points.

22 So for an employee's sickness they  
23 were assigned -- if they were absent, they were  
24 assigned points.

25 Q. Was a sickness -- absence from

1 employees' sickness that was accompanied by a  
2 doctor's note accepted from that point?

3 A. It was not.

4 Q. And then I'm directing your  
5 attention to Page 8.

6 Could you just explain to us how  
7 points and levels, disciplinary levels, worked?

8 A. Yes. Under this policy, for  
9 passenger service and fleet service, if they  
10 had less than five points -- and we used a  
11 rolling 12-month period from the most recent  
12 occurrence -- then they could get a  
13 nondisciplinary coaching discussion.

14 If they got five points within a  
15 rolling 12-month period, which meant whenever  
16 they had this occurrence you look back 12  
17 months. If they reached five points, that  
18 could be a level one.

19 Once they were placed on a  
20 discipline level then it was the effective  
21 period of the discipline level, which was 12  
22 months, and you looked at the occurrences for  
23 points within that 12-month period to decide  
24 and determine whether or not they would  
25 escalate to the next level.

1 Q. And were these attendance control  
2 policies for maintenance and related and fleet  
3 in effect when you retired in May of 2014?

4 A. They were.

5 Q. And at the time that you retired is  
6 the -- you know, the description of how these  
7 policies applied, was that in effect at the  
8 time that you retired?

9 A. Yes.

10 Q. I have just a few more questions for  
11 you regarding testimony that we previously  
12 heard.

13 In particular, Mr. Regan testified,  
14 and this is at transcript Page 89, that, "The  
15 bona fide language always gave us the right  
16 under these policies that were in place to  
17 argue that that should not be counted toward  
18 any threshold denominators."

19 And looking at -- let me make sure I  
20 get the full quote here. Let me just give you  
21 the full quote.

22 It was, "So, when somebody was sick  
23 and they came in, provided a document or some  
24 other documentation to legitimize their  
25 illness, that language -- that language being

1 the bona fide language, always gave us the  
2 right, under the policies that were in place,  
3 to argue that that should not be counted toward  
4 any threshold denominators" -- and you know,  
5 especially under the 2010 agreement, there were  
6 many cases under many -- "the Company agreed  
7 based on certain circumstances, that they would  
8 not count for that threshold."

9 While you were in labor relations --  
10 while you were the managing director of labor  
11 relations, did the Union make that argument?

12 A. That argument was never made.

13 Q. Mr. Regan also testified, also on  
14 Page 89, "Again, the signed letter went in, I  
15 think, in January of '88, but Article 12  
16 language, which was the bona fide language that  
17 we agreed existed for some time, always gave us  
18 the argument and we always argued bona fide was  
19 legitimate use, and whatever policy was in  
20 place we argued that whether it be a policy in  
21 whole or an individual basis, based on that  
22 individual's circumstances."

23 While you were managing director of  
24 labor relations did the Union make that  
25 argument?

1           A.     They did not. That modified  
2 language only applied to whether or not the  
3 Company could request a doctor's note, and they  
4 never made any other argument.

5           Q.     Thank you.

6                   MS. JOSHI: If I could just  
7 take one minute? I think we're about finished  
8 here.

9                   ARBITRATOR WEINSTOCK:  
10 Certainly. Let's go off the record.

11                           (A recess was taken.)

12                   ARBITRATOR WEINSTOCK: Back on  
13 the record.

14                   MS. JOSHI: No further  
15 questions for Mr. Harbinson at this time.

16                   ARBITRATOR WEINSTOCK: Okay.  
17 Ms. Gornail, are you ready for cross or do you  
18 need some time?

19                   MS. GORNAIL: Just a short  
20 break.

21                   ARBITRATOR WEINSTOCK: Okay.  
22 How much time would you like?

23                   MS. GORNAIL: Approximately  
24 five minutes.

25                   ARBITRATOR WEINSTOCK: Let's

1 go off the record, please.

2 (A recess was taken.)

3 ARBITRATOR WEINSTOCK: Does  
4 the Union have any questions of Mr. Harbinson?

5 MS. GORNAIL: Yes.

6 ARBITRATOR WEINSTOCK: Go  
7 right ahead.

8 MS. GORNAIL: Thank you.

9 CROSS-EXAMINATION

10 BY MS. GORNAIL:

11 Q. Good afternoon, Mr. Harbinson. Just  
12 a few questions for you.

13 So just to be clear, with all the  
14 policies we discussed, late, maintenance, all  
15 -- under all of those policies the Union  
16 employees were subject to just cause if they  
17 were disciplined for attendance; correct?

18 A. The Union always had the right to  
19 file a grievance if they felt somebody was  
20 unfairly disciplined, yes.

21 Q. Okay. And I think you said it, but  
22 the just-cause standard applied for all those  
23 circumstances?

24 A. Correct.

25 Q. Now, you said -- I believe you



1 testified that you were saying that the Union  
2 never made particular arguments and I just  
3 wanted to clarify your role.

4 So you were the managing director of  
5 what's it called? Labor relations?

6 A. Yeah, labor relations.

7 Q. Okay. Now, so that means you were  
8 not actually out at the stations, like issuing  
9 discipline to people under the policies;  
10 correct?

11 A. That's correct.

12 Q. And at the time you were -- is it  
13 accurate there were approximately 17 different  
14 stations at the time that you were in labor  
15 relations?

16 A. In mechanic and related?

17 Q. Sorry. In mechanic -- in mechanic  
18 and related.

19 A. Approximately, yes.

20 Q. Okay. So you don't know what  
21 happened on a daily basis with every type of  
22 discipline that was issued or points that were  
23 issued for -- for maintenance and related;  
24 correct?

25 A. I could not tell you on a daily

1 basis every single one that was issued, that's  
2 correct.

3 Q. And the same thing on the fleet  
4 side; right?

5 A. That's correct.

6 Q. And even if a -- when it -- if there  
7 was a grievance that was filed, your -- as the  
8 managing director of labor relations, you were  
9 not involved with the -- the grievances  
10 wouldn't go to you at the first level; correct?

11 A. Not the first level, no.

12 Q. Second level also would not go to  
13 you?

14 A. Correct.

15 Q. The third level, the grievances  
16 would not go to you?

17 A. Yes, they would.

18 Q. Okay. At the third level.

19 So if it's the -- if a grievance was  
20 resolved with respect to discipline before the  
21 third level, you wouldn't -- you wouldn't  
22 necessarily know that; correct?

23 A. That's correct.

24 Q. Okay. So when you say that the  
25 Union never made any arguments about whether

1 people should fall under any threshold, you  
2 don't know about any of those other things we  
3 talked about, whether it's on the field or any  
4 of those prior grievance levels?

5 A. Sorry. They never made that  
6 argument to labor relations about the policy.

7 Q. Okay. Now, you spoke -- well, let's  
8 go to Union -- I'm sorry -- Company Exhibit 14,  
9 Page 6.

10 A. Yeah.

11 Q. I think we all know at this point it  
12 says "may" occur as "discipline may occur on  
13 the maintenance side going up."

14 So, did I understand correctly that  
15 you were -- well, let me just ask you: Was  
16 there an automatic progression under your  
17 understanding of the 2010 policy that employees  
18 would automatically progress throughout the  
19 levels of discipline if they had occurrences?

20 A. We wanted a consistent application  
21 of the policy, so if they met the threshold,  
22 then the discipline should have applied, unless  
23 there was extenuating circumstances that the  
24 manager took into account.

25 Q. So could the manager take into

1 account an employee's individual circumstances  
2 on legitimate sick leave to determine whether  
3 to issue discipline?

4 A. They could take into account the  
5 circumstances around the employee's absence.

6 Q. Did that include legitimate illness?

7 A. I'm not sure what you mean by  
8 "legitimate illness."

9 Q. Okay. So let's say an employee  
10 tells the manager -- well, let me ask first a  
11 question:

12 Do you know at that point in 2010  
13 managers would call employees in to discuss  
14 their absences before issuing discipline?

15 A. Yes.

16 Q. Okay.

17 A. They were supposed to.

18 Q. They were supposed to.

19 Now, in -- if they -- if a  
20 manager -- if an employee went into a manager  
21 and said, "I had a terrible stomach virus,  
22 everybody in my family got it, this is why I  
23 was absent," could the manager say, "okay. I  
24 believe you, and I am not going to issue a  
25 discipline in this case, I'm not going to

1 progress you"?

2 A. The manager had the right to take  
3 into account the individual circumstances.

4 Q. Right. The circumstances that I  
5 just described about legit -- that's a legit  
6 illness, could the manager take those  
7 circumstances into account and say, "I'm not  
8 going to issue a discipline or progress you"?

9 A. The manager could take that into  
10 account.

11 Q. Okay. Thank you.

12 Going to Union -- sorry. I keep  
13 saying Union -- Company Exhibit 17, also Page  
14 6.

15 A. Page 6?

16 Q. Yeah.

17 A. Okay.

18 Q. On the fleet side, I thought I  
19 understood your testimony to be that  
20 employees -- that employees automatically  
21 progressed and were issued points, is that  
22 correct, under that policy?

23 A. No. Employees are automatically  
24 issued points and then if they met the  
25 threshold, then they would progress. But

1 again, managers always had the right to take  
2 into account individual circumstances.

3 Q. Okay. And so with respect to your  
4 last point about managers "could take into  
5 account those circumstances," that was actually  
6 reflected in the policy Union -- I'm sorry.

7 Company Exhibit 17, Page 6, do you  
8 see above the chart, about two sentences  
9 before, it says, "Management will be permitted  
10 to consider individual circumstances with  
11 respect to determining the discipline level  
12 that should be issued in connection with those  
13 infractions or attendance points."

14 Do you see that sentence?

15 A. I do.

16 Q. Okay. So is it -- am I correct in  
17 my understanding that means that a manager  
18 could -- an employee could get points and a  
19 manager could say, "Based on your  
20 circumstances, I'm not going to progress you to  
21 the next level of discipline"?

22 A. That's correct.

23 Q. And again, on the fleet side, that  
24 could also include the legitimate illness;  
25 correct?

1           A.     Yeah.  I thought this was the fleet  
2 side.

3           Q.     It was.  I was just saying, even on  
4 the fleet side, it also included for legitimate  
5 illness that could be part of those individual  
6 circumstances?

7           A.     It could.  Any absence could be  
8 taken into a consideration by the manager.

9                   MS. GORNAIL:  Okay.  I have  
10 nothing further.  Thank you so much.

11                   ARBITRATOR WEINSTOCK:  Okay.  
12 Any redirect, Ms. Joshi?  Once again, I'm  
13 asking politely.

14                   MS. JOSHI:  I know.  Thank  
15 you.  No redirect.

16                   ARBITRATOR WEINSTOCK:  Okay.  
17 Thank you, Mr. Harbinson.  Your testimony is  
18 concluded.  Thank you very much for your  
19 patience and waiting to testify today.

20                   Let's go off the record for a  
21 moment.

22                                 (A recess was taken.)

23                   ARBITRATOR WEINSTOCK:  In  
24 off-the-record discussions, we have determined  
25 that this is a convenient stopping point for

1 today. We will reconvene tomorrow at 9:00 a.m.  
2 and continue with the Company's direct case.

3 I want to thank everyone for your  
4 patience today. You worked a long day with  
5 only brief breaks, and I will see you all  
6 tomorrow at 9:00 a.m.

7 We are off the record at 4:49.  
8 Thank you.

9 (A discussion was held off the  
10 record.)

11 THE REPORTER: Ms. Gornail, do  
12 you need the rough?

13 MS. GORNAIL: I do not need  
14 it, but if Aparna gets it, I'll take it.

15 THE REPORTER: I think  
16 Ms. Joshi jumped into the breakout room  
17 already.

18 ARBITRATOR WEINSTOCK: Hang  
19 on, Alyssa. I'll go get her.

20 (A discussion was held off the  
21 record.)

22 ARBITRATOR WEINSTOCK: I've  
23 got Aparna coming in, Alyssa, and she'll tell  
24 you what she wants.

25 THE REPORTER: Thank you.



1                   ARBITRATOR WEINSTOCK: That's  
2 the problem. Oh, wait a minute, Aparna. Hold  
3 on a minute. I may -- I think you have two  
4 devices so hold on a minute. That's the  
5 problem; isn't it?

6                   THE REPORTER: I think we got  
7 it.

8                   ARBITRATOR WEINSTOCK: Yeah,  
9 you're -- your device --

10                  MS. JOSHI: I think I'm in.  
11 Can you guys hear me?

12                  ARBITRATOR WEINSTOCK: Now we  
13 can hear you. Sure.

14                  MS. JOSHI: Perfect. Perfect.  
15 I guess, you know, thinking about it, in terms  
16 of a rough, it's -- if Christina intends to get  
17 one, then we'll get it. And if not, then we  
18 won't.

19                  MS. GORNAIL: That was the  
20 same thing I said. It's okay. I don't think I  
21 need it for tonight.

22                  MS. JOSHI: I don't need it  
23 either. That's fine. I appreciate it, but  
24 we're fine.

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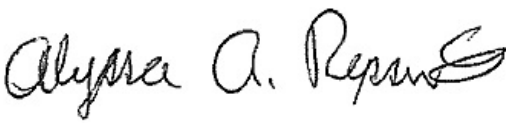
(Thereupon, the arbitration was  
adjourned at 4:52 p.m.)

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C E R T I F I C A T E

I hereby certify that the  
proceedings and evidence are contained fully  
and accurately in the stenographic notes taken  
by me on the hearing of the within cause, and  
that this is a correct transcript of the same.



=====

Alyssa A. Repsik, Court Reporter

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