CROSS-BORDER MERGERS AND ACQUISITIONS: A UNION PERSPECTIVE

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Mergers and acquisitions alter the status quo. Like most events that challenge the status quo, they present many challenges and opportunities. While mergers and acquisitions often are referred to as “corporate transactions,” unions, in fact, can and do have significant roles to play in the shaping and implementation of such transactions and, at times, are critical to the final determination whether a transaction will or will not be finalized.

In this paper, we focus on mergers and acquisitions from a union perspective: the union’s objectives in dealing with transactions, the nature of a union’s due diligence exercise, negotiations related to transactions, participation in administrative and court proceedings related to transactions, the involvement of union membership in transactions, and the use of political and public relations campaigns in conjunction with transactions. We also include some examples of the ways unions have addressed mergers and acquisitions in collective bargaining, and review a concrete example of how the issues can play out from a union perspective in a cross-border transaction in which competing legal frameworks are present.

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I. **The Objectives of Unions in Dealing with Mergers and Acquisitions**

Unions typically become involved in mergers and acquisitions because either they represent employees of both companies involved in the transaction or the employees of one of the transaction parties. Unions also may have an interest in a transaction where they are seeking to obtain new representational rights for the affected employees -- a subject not addressed in this paper.

The overriding objective of Unions generally is take action that best protects the interests of the employees they represent. The same is true when it comes to dealing with transactions. In furtherance of this objective, a Union involved in a transaction is likely to take action that will maximize the likelihood that it will be able to play a meaningful role in the process, at an early rather than late stage, so that it is not simply relegated to addressing the “effects” of a done deal. For similar reasons, the Union will seek to resist efforts by management to ignore or marginalize the Union’s role with respect to the transaction.

A second and by no means insignificant Union objective is to do what it can to maintain its status as representative of the employees or, failing that, to ensure that the employees are not left unrepresented following implementation of the transaction.

II. **Due Diligence by the Union**

One typically thinks of a due diligence exercise as something engaged in by management, but Unions also need to undertake their own due diligence when confronted with a proposed transaction that involves employees it represents. While the Union’s due diligence mirrors certain aspects of that performed by management, the Union also will focus on matters that are of particular concern to it and its membership, particularly with regard to the implications of the
transaction for continued employment opportunities and for the terms and conditions of employment that will apply post-transaction.

A. Obtaining Documentation and Data

The Union’s review typically begins with collecting and analyzing publicly available information. The Union also will make detailed requests to the Companies involved in the transaction, or at least to the Company whose employs the Union represents, for a wide variety of documents describing the transaction, the alleged benefits of the transaction, and the anticipated impact on employment and employees. This will include a demand for “full access” to the Company’s financial “books” that greatly exceeds what a Union might typically be provided or reasonably anticipate being given access to in the ordinary course of the Company-Union relationship.

B. Meetings with the Company

The Union will seek an initial in-person briefing by the Company parties to the transaction as soon as it learns of the transaction, to be followed by further meetings as frequently as necessary and throughout the period prior to finalization of the transaction. So that these meetings will be substantive and not formalistic, the Union will press for inclusion of real Company decision-makers and not just place-holder functionaries.

C. Retention of Financial Advisors

As part of its due diligence, a Union is likely to need skilled assistance in analyzing the financial and business aspects of a transaction. This often will require the Union to retain a financial advisor who, depending on the nature of the transaction, the Union’s objectives, and its resources (although the Union often will seek to have the Company cover such fees), might be an investment banker. In addition to reviewing the information and data pertinent to the transaction
and regarding the Company parties to the transaction, the Union’s financial advisor may be expected to provide the Union with strategic assessments and recommendations and to assist it in transaction-related negotiations.

D. Retention of Legal Advisors

Proposed transactions often involve a host of legal issues and so it is not surprising that Unions will tap their regular counsel and/or retain additional counsel to assist in addressing the transaction. This may include – depending on the nature of the transaction and the particular Union – not only union-side labor lawyers, but also corporate or tax counsel with special expertise in dealing with transactional issues. Again, depending on the Union’s preferences, objectives and resources, it may use counsel not only to assess the legal issues, but also to provide broader strategic advice and to assist in negotiations. Counsel also may be needed to provide representation in proceedings before administrative bodies or to initiate, defend or intervene in court litigation. And, in a cross-border transaction, it often is necessary or at minimum prudent to also line up counsel from other jurisdictions that may be directly or indirectly involved in the transaction. Often, it is the Union’s regular counsel who will be responsible for the selection and retention of foreign counsel and who will be the Union’s contact point with the foreign counsel.

E. Thorough Analysis of the Other Company’s Workforce

The Union will want to review the collective bargaining agreements (“CBAs”), if any, that apply to the employees of the other Company party to the transaction. Among the CBA terms of interest will be any that address transactions, including successorship rights, as well as the wages, seniority, key work rules, and the grievance and arbitration machinery, including any opportunity for expedited processing of grievances. Typically, the Union will prepare a
document comparing the other Company’s CBA(s) with the CBA(s) to which the Union is a party, particularly if there is the prospect of a representation dispute or campaign.

It often is extremely important to analyze the seniority composition of the other transaction party’s workforce. This may well determine the Union’s approach and preferences regarding integration of the workforces, to the extent the Union has the ability to shape the integration. Here, the differences between U.S. and foreign law may be critical. In the U.S., as a general proposition, seniority rights are contractual, not statutory, and absent CBA provisions to the contrary, there is nothing that guarantees that the seniority of the employees of an acquired company will be recognized post-transaction. Thus, while some form of “dove-tailing” of seniority if often utilized, through which at least some credit is given for the prior service of the acquired Company’s employees, that is not legally required (absent contractual provisions to the contrary) and there is nothing inherently illegal in “end-tailing” such employees (i.e., treating them as if they were new hires).1 In contrast, in jurisdictions where the Transfer of Undertakings Directive or its equivalent apply, employees’ seniority rights must continue to be recognized after a merger or acquisition. See International Labor and Employment Laws, Vol. 1A at 1-116-117, 2-14, (3d ed., BNA 2009, William J. Keller and Timothy J. Darby, eds.); id. Vol. IB at 31-64-65 (discussion regarding requirements under Canadian law). Thus, determining which law will apply in a cross-border transaction is critical. See discussion at part VIII of this paper, infra.

F. Discussions with Other Unions

If the employees of the Company parties to the transaction are represented by different Unions, the Unions may want to engage in discussions to assess whether they share common

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1 See, e.g., Rakestraw v. United Airlines, 981 F.2d 1524, 1535 (7th Cir. 1992).
positions or interests with respect to the transaction and, if so, to attempt to formulate common strategies. Among other things, there hopefully will be a common desire to counter any effort by the Companies to “whipsaw” the Unions and employee groups against one another by offering more favorable treatment to the more “accommodating” Union/employee group.

If the discussions between the Unions reveal that they have significant differences regarding the transaction, that, too, will be important to know as early in the process as possible. Whether the Unions are or are not on the same page regarding the transaction, it also may be useful or prudent to involve a broader labor federation, which may be able to provide assistance in bridging differences between the Unions and in bringing pressure to bear against the Company parties to the transaction – and particularly on the purchaser/surviving entity – in order to further the interests of the Unions and to best protect the employees from adverse impact that otherwise might result from the transaction.

Of course, before any such inter-union meetings, each Union will want to learn as much as it can about the other and its approach to the transaction and, more generally, to mergers and acquisitions, seniority integration and the like. This would include a careful review by each Union of the other Union’s Constitution and policies to ascertain whether it has any policies that pertain to transactions, such as an internal merger policy.

G. Developing Strategies for Resisting Reductions in Force and to Employment Terms and Conditions

A key objective of the Union will be to prevent job reductions as a result of the transaction. If the Union does not receive satisfactory assurances (preferably written) on this score, it will need to formulate strategies and identify pressure points that will maximize the Union’s ability to reverse or modify the Company’s plans. The Union also will want to ensure that terms and conditions of employment will not be reduced for employees post-transaction.
This particularly is of concern if the CBA comparisons (discussed above) reveal that the other Company’s employees are working under inferior terms and conditions of employment, which in turn could create a downward “race to the bottom” pressure. A number of the issues discussed below will reflect the preceding concerns and strategic objectives.

III. **Negotiations Related to Mergers and Acquisitions**

After the Union has performed its due diligence, it likely will seek to enter into negotiations with the Company with which it has a collective bargaining relationship and/or with both Company parties in an effort to influence whether and how the transaction is finalized and implemented. The Union’s ability to bring the Company to the negotiating table and at a stage in the process that the Union desires may be influenced by the terms of the existing CBAs and by the Union’s strength or leverage. Negotiations also may be dependent on the presence of and enforceability of successorship or similar provisions in a CBA. This is another area in which the laws in the U.S. and other jurisdictions may differ.

With regard to entities and employees subject to the National Labor Relations Act (“NLRA”), 29 U.S.C. §§151 et. seq., the extent to which a successor may be bound by a CBA or obligated to bargain with the Union that represents the predecessor’s employees has been the subject of many Supreme Court, lower court and NLRB decisions, which in turn have focused on the continuity of operations and the continued majority status of the represented employees post-transaction.²

In the context of the Railway Labor Act (“RLA”), 45 U.S.C. §§151 et. seq., which is applicable to rail and air “carriers,” if it is clear who the employees’ representative is after a

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² For a discussion of the applicable and evolving case law under the NLRA, see *The Developing Labor Law*, Vol. 1, Ch. 15 (5th ed., BNA, John E. Higgins, Jr., ed.) at 1101 *et. seq.*, and 2010 Supplement, Ch. 15.
transaction, the pre-transaction CBA will survive and be enforceable. If a transaction leaves no employee representative -- as when the employees at one of the pre-merger Companies was unionized, but the other Company’s employees greatly outnumbered that group and were not unionized -- a CBA will not continue to be enforced. Where the National Mediation Board (“NMB”) has determined, in response to a Union or employee application, that a transaction between carriers has resulted in the replacement of separate carriers for RLA purposes by a “single transportation system” and that the employee groups are comparable in size (i.e., that each group is at least 35% of the combined group), it will conduct an election to determine which Union (if any) shall represent the employees. Even after a Union has been certified, under the above procedure, to represent the combined workforce, the pre-existing separate CBAs will continue in effect unless the terms of the CBAs provide otherwise or until the surviving Company and the Union reach agreement on a new merged CBA.

In attempting to trigger and/or in conducting transaction-related negotiations, the Union may consider it necessary or prudent to coordinate with other involved Unions. Whether and how this should occur may be affected by the Union’s strategy and objectives, including whether the Union can or should proceed on its own in shaping the transaction from an employee perspective or whether it believes the interests of the employees it represents will best be protected through an agreed-upon multi-Union approach.

The Union’s key objectives in negotiations are likely to be to preserve jobs and to preserve, and ideally improve upon, existing terms and conditions of employment. In addition,

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the Union will be focused on negotiating terms and protections that will best enable it to maintain its status as bargaining representative.

Because time often is of the essence in transactional negotiations, the Union will strive to secure agreement to an intensive, expedited negotiations process, with agreement by the Company to commit the time, resources and appropriate Company representatives to active involvement in the negotiations. Depending upon the particular Company-Union relationship and the issues involved, the Union or the Company may consider it useful to involve an outside person – whether a mediator, facilitator or the like – to help move the negotiations along and to offer useful suggestions. If the CBA includes a right to arbitration that is applicable to the transaction, the Union may also consider it necessary to pursue arbitration in sufficient time to result in issuance of an award before the transaction and its implementation become a fait accompli. If the Union decides to pursue this course and it encounters Company resistance, the Union will need to be prepared to litigate, as necessary, to compel arbitration and to try to stop the Company from proceeding before an arbitrator can render a decision.6

IV. Participation in Court and/or Agency Proceedings Pertaining to Transactions

Depending on the nature of the transaction and the jurisdictions involved, the proposed transaction may require governmental review or approval. If so, it likely would be prudent for the Union to take the steps necessary to ensure that it has access to the various filings and rulings in the proceeding. It may be sufficient to obtain a written commitment by the Company with whom the Union has an established relationship to provide it with copies of all such documentation. However, for both substantive and internal Union and membership-related

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6 See, e.g., Association of Flight Attendants v. United Airlines, 71 F.3d 915 (D.C. Cir. 1995). Such efforts may be unsuccessful if the court determines, at least in an RLA context, that there is an underlying representation dispute. See, e.g., Air Line Pilots Ass’n v. Texas Int’l Airlines, 656 F.2d 16 (2d Cir. 1981).
reasons, it may be advisable for the Union to formally become a party to the proceedings, by filing a notice of appearance or seeking to intervene.

In addition to merely being aware of what is taking place in such proceedings, the Union may want to become an active participant, making information or document requests, submitting briefs and/or evidence, and presenting and cross-examining witnesses. The nature and extent of the Union’s participation will depend among a variety of factors, including: whether the Union considers the transaction to be beneficial or harmful to the employees it represents; the Company’s plans (to the extent known); the Company’s willingness to negotiate or otherwise satisfy the Union’s concerns; the resources the Union is able and willing to devote to such proceedings; the perceived need to participate because of the demands of the Union membership; and the rules applicable in the particular forum that may affect if and how the Union can participate.

It also is possible that there will be court proceedings related to the transaction, in which case some or all of the above factors may influence whether and to what extent the Union participates. Of course, if the Union believes the Company is acting illegally or in violation of existing contractual rights and protections, the Union may be the party who initiates such litigation.

V. **Involvement of the Union Membership in the Transaction**

In all likelihood, the proposed transaction is going to have significant consequences for the employees represented by the Union. The Union’s members likely will be clamoring for information regarding the transaction and it behooves the Union to be out-in-front in obtaining and providing such information. By doing so, the Union may be able to dispel erroneous information and fear-mongering that others may seek to promote, particularly on the web and
through social media. Just as importantly, by encouraging the employees to look to the Union as a (and ideally the) reliable source of information, the Union may be better-positioned to solicit and obtain membership support for the positions and initiatives the Union takes in addressing the potential concerns presented by the transaction. In this respect, the Union would be acting similar to the way it does in successful collective bargaining negotiations, solidifying membership support for the Union and successfully countering efforts aimed at causing divisions within the Union’s ranks and between the Union and its membership.

VI. **Possible Political and Public Relations Campaigns**

In addition to pursuing the various other steps outlined above, the Union may find it necessary or helpful to develop and implement a public relations campaign, and/or to “lobby” pertinent government officials to help bring pressure in support of the Union’s position. This particularly may be the case where there is a real prospect of job losses or where it otherwise appears that the transaction may be harmful to the employees and to communities in which the Company is operating. The Union’s objectives and tactics may vary, depending on whether the Union is seeking to block the transaction, promote the transaction, modify transaction terms as they pertain to employees, etc.

VII. **Examples of the Ways Some U.S. Unions Have Addressed Mergers and Acquisitions in CBAs**

Unions have negotiated for inclusion of a wide variety of provisions in CBAs to provide protections for represented employees in the event a transaction is proposed. The following are but some examples.

A. **Successorship Clauses**: Provisions have been included in CBAs that purport to make the CBAs binding on the “successor” to the transaction (i.e., on the purchaser or other entity that will “survive” the transaction). Certain of these provisions also have provided for
continued recognition of the Union by the successor, although the enforceability of such provisions may turn on whether the corresponding workforce of the successor is represented by another Union and/or on whether the Union can reasonably be considered to have majority support among the successor’s employees.

B. **Notice of the Transaction:** The CBA may require the Company to provide notice of the transaction and pertinent details before the transaction is concluded. Generally speaking, U.S. employees have no “right” to such information in the absence of CBA provisions. In Europe, in contrast, the obligation to provide such information is statutorily grounded, through the Information and Consultation Directive and implementing Member State legislation, see *International Labor and Employment Laws*, Vol. 1A at 1-97-109, 2-14-17 (3d ed.(BNA 2009, William J. Keller and Timothy J. Darby, eds.), and 2010 Supplement, Vol. 1A at 1-47-51; see also id. Vol. IB at 31-64-65 (Canadian duty to consult with the Union concerning changes of fundamental importance to the bargaining relationship).

C. **Right to Reopen the CBA:** Some CBAs provide Unions with a right to trigger negotiations to reopen the CBA in the event of a transaction.

D. **No Layoff Protections:** Unions often seek and at times have successfully included provisions that prohibit layoffs of employees in the event of transactions, extending at least for certain periods of time following a transaction’s implementation. However, such clauses typically require a causal connection between the layoffs and the transaction, which in turn can present difficult issues of proof in the event the Company denies the layoffs are transaction-related.

E. **Prohibition of Reductions in Wages and Working Conditions:** Some Unions have successfully negotiated provisions that prohibit reduction in existing CBA wages and terms
and conditions, although these may be time-limited and also dependant upon a causal link between the transaction and the reductions which, as previously noted, may be difficult to establish.

F. **Right to Extend the CBA:** Some CBAs have provided that the Union, at its option, may elect to extend the duration of the CBA in the event of a transaction, and where such a right is included there often also is the previously described right of the Union to elect to reopen the CBA.

G. **Union Opportunity to Make a Competing Offer:** In certain situations, Unions have negotiated CBA provisions that grant the Union, in the event of a proposed sale of the Company with which it has a collective bargaining relationship, the right to make a competing offer to purchase the Company. Granted this is not typical, and even where it exists, it may not be a realistic option. However, this has been included in certain U.S. airline pilot CBAs, where the resources to secure the necessary funding to make a competing offer, whether through modifications to other CBA terms and/or through partial financing by outside sources, is at least a possibility.

H. **“Scope Clause” Provisions:** Unions have negotiated “scope clause” provisions that are designed to ensure that the employees represented by the Union continue to perform the work post-transaction that they have been performing pre-transaction and that they will get their fair share of any additional work opportunities that flow from the transaction. Some scope provisions have been incredibly detailed and specific and securing acceptable scope issues have been accorded extremely high priority by some Unions. Indeed, thorny scope issues often have been among the last remaining items to be resolved before a CBA is concluded.
I. **Required Union Approval of Transactions:** Some CBAs have included provisions that require Union approval for the transaction to be finalized or implemented. Where such provisions have been negotiated, they typically pertain not to an overall acquisition or merger, but rather to the Company’s ability to conduct particular kinds of operations or operations at particular geographic locations.

J. **Labor Protective Provisions:** In certain CBAs, Unions have successfully included “labor protective provisions” to which employees are entitled in the event of certain types of transactions. Some examples are protections of existing seniority or procedures for determining seniority post-transaction, as well as specified financial payments for employees who are laid off or who experience reductions in earnings or who incur expenses (such as moving expenses) as a result of forced geographic relocations as a result of the transactions.

K. **“Fencing of Operations”:** Certain Unions has sought to include and been successful in negotiating provisions in CBAs that provide for a “fencing of operations,” by which the employees of the Company parties to the transaction and their work are kept separate and un-integrated until certain post-transaction events occur (*e.g.*, until the seniority lists of the employee groups are merged and/or until a single CBA has been negotiated to replace the separate CBAs that were in force at each Company prior to the transaction). The objective of such provisions is preserve the pre-existing relative rights of the employees until an integration occurs pursuant to an orderly process in which their Union or Unions are full participants.

L. **Right of Employees to Transfer with the Partial Sale of a Business or with a Transfer of Significant Company Assets:** Some transactions, of course, involve the sale of less than an entire business. To deal with those kinds of transactions, some CBAs have provided that workers will be given the opportunity to transfer in proportion to the work that is being
transferred or with the work associated with significant assets that are being transferred. Outside of the U.S., the previously referenced Transfer of Undertakings Directive may operate to provide protections for the employees who are affected by a transaction. In the U.S., however, the only potentially applicable statutory protections are those provided by the federal WARN Act or counterpart state legislation, and otherwise the employees are dependent upon whatever protections are included in CBAs under which they are covered.

M. Prohibition on Certain “Foreign” Activities: To protect against a loss of employment rights that might result if the Company sells or transfers all or part of a business to a foreign location in which U.S. employee rights may not be recognized, some CBAs have included provisions that prohibit establishing foreign employee bases absent the agreement of the Union. To some extent, the perceived need for such provisions has been triggered by concern that U.S. law and CBAs will not be applied or enforceable extraterritorially and/or that a U.S. Union’s status will not be recognized in the foreign location.

N. Right to Expedited Arbitration: To address a concern that Unions have had that they may not be able to enforce CBA rights after a transaction has been finalized or that they may not be able to “unscramble the egg” after the transaction parties have proceeded to implement the transaction, some Unions have negotiated provisions in CBAs that permit them to demand expedited arbitration of scope- and transaction-related disputes, typically requiring a tight timeframe for hearing and deciding transaction-related grievances.

VIII. The Impact of Choice of Law Issues: a Real-Life Experience

As previously noted, labor and employment issues pertinent to how particular transactions are handled may be addressed differently in different countries. This can present a host of interesting and thorny choice-of-law issues. An actual example in which this was the
case arose out of the acquisition by United Air Lines ("United") of the London operations of Pan American Airlines ("Pan Am") shortly before Pan Am’s demise. As part of the transaction, United agreed to hire a “reasonable number” of Pan Am pilots and flight attendants. At the time, the Pan Am flight attendants based in London were represented by the Independent Union of Flight Attendants ("IUFA"), which also represented all of Pan Am’s flight attendants based in the U.S., and all the Pan Am flight attendants, including those based in London, were subject to the Pan Am-IUFA CBA. United had many more flight attendants than did Pan Am, all based at the time in the U.S., they were represented by a different Union -- the Association of Flight Attendants ("AFA") -- and were covered by a United-AFA CBA.

United offered employment to most but not all of the London-based Pan Am flight attendants. United informed those to whom it extended employment offers that the terms of the United-AFA CBA would govern their employment and that, only if AFA consented, would the hired flight attendants receive seniority credit at United for their service at Pan Am.

The Pan Am flight attendants considered United’s seniority position unacceptable. Both those who were offer employment by United and those who were not sued United in London, *Gately v. United Air Lines*, CH 1991 G No. 2740 (High Court of Justice, Chancery Division). They claimed that, under the British Transfer of Undertakings legislation, United was obligated to hire all the former Pan Am flight attendants based in London and to grant them terms and conditions, including seniority, no less favorable than they enjoyed at Pan Am, *i.e.*, at minimum, the terms provided under the Pan Am-IUFA CBA. The Pan Am flight attendants’ litigation was funded by IUFA.

United and AFA (AFA intervened in the High Court proceedings) contended that U.S. law (here, the RLA) applied rather than British law because of the overriding U.S. ties to the
litigation: United was a U.S. carrier, both AFA and IUFA were U.S. unions, the United-UFA collective bargaining agreement had been negotiated in the U.S. under U.S. law, and the bulk of the London-related flying was between the U.S. and the United Kingdom and therefore not "wholly foreign." United and AFA additionally argued that, if United proceeded as the Pan Am flight attendants insisted they had to, United would violate the RLA because it would be changing the terms and conditions of employment mandated by the United-AFA CBA without following the RLA’s mandatory bargaining and status quo provisions. The Pan Am flight attendants and IUFA argued that the RLA did not apply because it did not extend extraterritorially to United’s operations in London or to British-based employees.

A five-day hearing was held in London on the Pan Am flight attendants’ request for the equivalent of a preliminary injunction. United, AFA and IUFA each retained solicitors to represent their interests in the U.K. and barristers to present their positions before the High Court. As part of their presentations, the two Unions and United each presented “expert” testimony on the requirements of U.S. law through written submissions by their U.S.-based counsel (including my submission on behalf of AFA and the United flight attendants). In addition, the proffered U.S. law experts provided their views in Court through the parties’ barristers in response to the Court’s request that the barristers “take advice” in responding to the Court’s inquiries regarding U.S. law (by which the barristers would consult with U.S. counsel in the Courtroom before conveying that “advice” to the Court).

Following the conclusion of the hearing and the Court’s deliberations, it denied the plaintiffs’ injunction application, concluding that the plaintiffs had not demonstrated that they were likely to establish that the British statute rather than the RLA applied and that the balance of hardships tipped in defendants’ favor. Interestingly, the Court based its latter conclusion on
its assessment that United was likely to be enjoined in the United States if it provided, without
AFA’s consent, the terms and conditions sought by plaintiffs. The British Court considered this
result compelled by a U.S. Court decision,\(^7\) which the Court considered to be the only decision
directly on point. The British Court did not find the fact that the flight attendants in question
were based in the United Kingdom to be determinative. Thus, this is a situation in which a
British Court determined, based on the presentations on U.S. law and its consideration of the U.S.
case law, that U.S. and British law were fundamentally different as they related to the transaction
issues in question, also determined that U.S. law rather than British law should apply, and further
determined, based on its application of U.S. law, the relative rights of the parties before it in the
London litigation. The British lawsuit was discontinued shortly after the Court denied the
injunction.\(^8\)

\(^7\)Local 553, Transport Workers Union v. Eastern Air Lines, 544 F.Supp. 1315 (E.D.N.Y.), aff’d as mod., 695 F.2d 668 (2d Cir. 1982).

\(^8\)For a more detailed discussed of case law addressing the determination of applicable law in the context of
international disputes and related issues, see Stephen B. Moldof, The Application of U.S. Labor Law to Activities
and Employees Outside the United States, 17 Lab. Law 417 (Winter/Spring 2002); International Labor and
Extraterritorial Application of U.S. Law, Part II – Collective Bargaining at 34-59 (Stephen B. Moldof and Joseph Z.
Fleming), and 2010 Supplement, Vols. IA and IB at 34--51 (same authors).