

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:)	
)	
ATA Holdings Corp., et al.)	Case No. 04-19866-BHL-11
)	(Jointly Administered)
Debtors.)	
)	

**INTERNATIONAL ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS' OPPOSITION TO DEBTORS' MOTION
FOR ORDER APPROVING THE AIRTRAN TRANSACTION**

The International Association of Machinists and Aerospace Workers ("IAM") objects to Debtors' Motion for Order Approving the AirTran Transaction or, if Applicable, One or More Alternative Transactions ("Transaction Motion"). AirTran's commitment to employ Debtors' employees is grossly inadequate, and the transaction violates the successorship language contained in the IAM-ATA collective bargaining agreement.

Facts

Debtors filed for protection under Chapter 11 of the Bankruptcy Code on October 26, 2004. The IAM is the certified collective bargaining representative for approximately 515 employees at ATA. The IAM represents approximately 403 members employed as ramp agents, as well as 112 members employed as stores clerks. ATA ramp agents are covered by a collective bargaining agreement between IAM and ATA. The collective bargaining agreement

covering IAM-represented stores clerks is currently in the process of being negotiated.

Article 3 of the IAM-ATA collective bargaining agreement provides that:

- A. The company will notify the Union promptly in writing in case of consolidation, merger, and route swap affecting work covered by the IAM Agreements, or in the event the Company purchases, acquires, or absorbs another airline or portions thereof, or in the event the Company or portion thereof is acquired by another airline.
- B. All provisions of this Agreement shall be binding upon the successors or assigns of the parties to this Agreement.
- C. The Company, the Union and other affected parties, if any, will meet for purposes of negotiating the integration of employee seniority lists in the event that any of the above occur.

(A true and correct copy of Article 3 of the IAM-ATA Collective Bargaining Agreement is attached as Exhibit A.)

Argument

AirTran's Commitment To The Debtors' Employees Is Inadequate And The Transaction Violates The Successorship Language Contained In The IAM-ATA Collective Bargaining Agreement.

AirTran's October 26, 2004 Commitment Letter provides that
AirTran:

"Without undertaking any obligation to hire any employee or group, to the extent practical and consistent with its hiring needs and standards, AirTran [sic] to undertake good faith efforts to employ individual qualified existing employees of Sellers as new AirTran employees."

Exhibit A to Transaction Motion at page 3, subparagraph (vii); see also Transaction Motion at page 11, paragraph 30(f).

Article X of the Asset Purchase Agreement dated November 16, 2004 ("APA") confirms that AirTran is making little or no commitment to hire former ATA employees at Midway. Article X states:

"Without undertaking any obligation to hire any employee or group of employees of Sellers, to the extent practical and consistent with its hiring needs and standards, AirTran agrees to undertake good faith efforts to employ individual qualified existing employees of Sellers resident in Chicago as new employees of AirTran. In furtherance of and subject to the foregoing, AirTran (i) presently expects that at such time as all of its services and flight schedules from the Midway Gates are operated with its own aircraft the number of full and part-time jobs required to perform the airside and landside operations at the Midway Gates will be substantially the same as the number of such jobs in place as of the Execution Date, subject to normal seasonal adjustment; (ii) intends to make good faith efforts to itself, or through third party vendors, provide preferential hiring consideration for such jobs to current, active individual employees of Seller, resident in Chicago, presently working in such positions at Midway, (iii) expects that it will, and will endeavor to require any third party vendors to, make job applications and/or interviews available to current, active employees of Seller and conduct or cause to be conducted job fairs or other similar opportunities for applications to be made for such available positions; (iv) believes that the current work experience of such active employees of Seller will be an important consideration in evaluating all such employees; and (v) currently intends also to give preferential hiring consideration on the same basis set out above to current, actively employed Midway based mechanics, flight and in-flight personnel, resident in Chicago, for Chicago based mechanic, flight and in-flight positions. It is contemplated that, with respect to all such positions set out in the preceding sentences, preferential hiring consideration will continue for a period of one-year after the Execution Date.

APA at pages 36-37, Article X (emphasis added).

Distilled to its essence, AirTran is under no obligation to hire a single ATA employee as a result of the transaction. And its

commitment, so far as it goes, to make "good faith" efforts to provide preferential hiring consideration is limited only to those active employees "resident in Chicago." APA at page 37, Article X.

ATA has not provided any information as to how many of its Midway employees even reside within the Chicago city limits. To exclude active Midway employees who may reside outside the city is wholly arbitrary and irrational. Moreover, in addition to making no real commitment to hire any ATA employees, the Transaction Motion also provides no mechanism for the City of Chicago, ATA, labor organizations or individual employees to monitor or enforce AirTran's limited "commitment" to afford former certain ATA employees preferential hiring. Absent any real commitment to hire ATA employees and absent any mechanism for individual employees to enforce AirTran's agreement to consider preferential hiring, the AirTran transaction is simply inequitable.

Debtors rely on In re The Lady H Coal Co., 193 B.R. 233, 245 (Bankr. S.D. W.Va. 1996), for the proposition that a decision to employ Debtors' employees is a factor viewed favorably by courts in reviewing proposed asset sales such as this. Transaction Motion at 13. In that case, however, the alternative to the sale of substantially all of the Debtors' assets was the "piecemeal liquidation" of the Debtor. 193 B.R. at 245. Nonetheless, the proposed purchaser committed to "consider[ing] all existing employees for hire and to retain no fewer than 25% of the existing workforce." Id. at 245. Here, Debtors make no claim that the alternative to the AirTran Transaction is piecemeal liquidation,

and yet AirTran makes no firm commitment to employ any of Debtors' employees. The apparent refusal by AirTran to commit to hire any of Debtors' employees is particularly egregious given its express acknowledgment that it fully expects that the number of jobs required to be filled after AirTran assumes full operation of the Midway assets will be "substantially the same" as currently exists. APA at page 37, Article X.

Finally, Debtors made no effort to comply with any of the terms of the successorship language contained in Article 3 of the IAM-ATA collective bargaining agreement prior to entering into its commitment with AirTran and filing its Transaction Motion. As has been noted, a "debtor has a duty under § 1113 [of the Code] to not obligate itself prior to negotiations with its union employees, which would preclude reaching a compromise" with the union. In re The Lady H Coal Co., 193 B.R. at 242.

In sum, unless AirTran is willing to commit to employ those ATA employees affected by the proposed transaction and agrees to an enforcement mechanism for monitoring such commitment, the Transaction Motion should be denied.

Conclusion

Based on the foregoing, Debtors' Transaction Motion should be denied.

Respectfully submitted,

/s/ John R. Carr III

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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was served this 10th day of December, 2004, by electronic mail or overnight mail on the Core Group, 2002 List and Appearance List.

/s/ John R. Carr III

Article 3: Status of Agreement

A. This Agreement between the Company and the Union constitutes the total Agreement affecting the craft or class of employee(s) covered by this Agreement, including Letters of Agreement and Supplemental Agreements found in Article 35: Letters of Agreement of this Agreement.

B. The Company will notify the Union promptly in writing in case of consolidation, merger, and route swap affecting work covered by the IAM Agreements, or in the event the Company purchases, acquires, or absorbs another airline or portions thereof, or in the event the Company or portion thereof is acquired by another airline.

C. All provisions of this Agreement shall be binding upon the successors or assigns of the parties to this Agreement.

D. The Company, the Union and other affected parties, if any, will meet for purposes of negotiating the integration of employee seniority lists in the event that any of the above occur.