

No. 02-58

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IN THE  
**Supreme Court of the United States**

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EASTERN PILOTS MERGER COMMITTEE,  
*Petitioner,*

v.

CONTINENTAL AIRLINES, INC.,  
*Respondent.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Third Circuit**

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**MOTION FOR LEAVE TO FILE BRIEF  
AMICUS CURIAE AND BRIEF AMICUS CURIAE OF  
THE ALLIED PILOTS ASSOCIATION  
IN SUPPORT OF PETITIONER**

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The Allied Pilots Association (“APA”) is the collective bargaining representative for 12,000 pilots at American Airlines, Inc. (“AA”), the largest airline in the world. APA moves for leave to file the attached brief *amicus curiae* in support of the Petition for *Certiorari*. Petitioner granted consent. Respondent’s counsel refused APA’s request for consent.

APA views the issues in this case from the perspective of a labor organization with ongoing obligations under the Railway Labor Act (“RLA”) to negotiate successorship rights and remedies for its pilots, and the further obligation to resolve disputes over the interpretation and application of its labor agreement through the adjustment board process mandated by

the RLA. In addition, AA pilots now include 2,000 pilots who formerly flew for Trans World Airlines, Inc. ("TWA"). Those pilots participated in section 1113 procedures under the Bankruptcy Code before AA purchased TWA's assets out of bankruptcy in April 2001.

APA shares petitioner's concern: the panel decision below grants airline management the same relief from collectively bargained obligations that management should have achieved, if at all, through the procedure for rejecting collective bargaining agreements prescribed in section 1113. The decision thus effectively negates both procedural and substantive employee protections mandated by the Bankruptcy Code, in favor of *ad hoc* inquiry by a bankruptcy court.

The panel decision also, however, in remarkably clear terms, infringes upon the exclusive jurisdiction of RLA adjustment boards to decide disputes growing "out of the interpretation or application" of labor agreements, including the jurisdiction to determine contractual remedies. 45 U.S.C. § 184. The panel decision thereby violates this Court's rulings in *Hawaiian Airlines v. Norris*, 512 U.S. 246, 252-53 (1994), and *Consolidated Rail v. Railway Labor Executives' Ass'n*, 491 U.S. 299, 303 (1989) ("*Conrail*"). Both cases clearly mandate primary and exclusive adjustment board jurisdiction over the interpretation of disputed contractual terms. Inadvertently or not, the panel decision opens the doors of federal courts to issues of contract interpretation formerly reserved for adjustment boards.

Because the airline industry faces unprecedented financial instability in the wake of September 11, 2001, including the potential bankruptcy of several carriers that AA may be interested in buying; because APA is currently negotiating a new labor agreement with AA, including expanded successorship rights; because AA, a Delaware corporation, is based in Dallas and thus peculiarly subject to the circuit split over bankruptcy law identified in the Petition for *Certiorari*; and

because the appropriate jurisdiction of RLA adjustment boards is a continual concern, and repeated subject of litigation, for APA and its pilots,<sup>1</sup> the APA asserts an interest in this proceeding and urges this Court to grant APA's motion for leave to file this brief *amicus curiae*.

Respectfully submitted,

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<sup>1</sup> See, e.g., *Whitaker v. Am. Airlines*, 285 F.3d 940 (11th Cir. 2002) (challenged discharge of probationary employee not a minor dispute); *Veta v. Am. Airlines*, No. 95-56299, 1997 U.S. App. LEXIS 4049 (9th Cir. Feb. 3, 1997) (challenged discharge of acquired airline's employee a minor dispute); *Anderson v. Am. Airlines*, 2 F.3d 590 (5th Cir. 1993) (allegation of retaliation for filing state workers' compensation claim not a minor dispute); *Renneisen v. Am. Airlines*, 990 F.2d 918 (7th Cir. 1993) (challenge to contract's validity not a minor dispute); *Davies v. Am. Airlines*, 971 F.2d 463 (10th Cir. 1992) (state law wrongful termination claim not a minor dispute); *Chandler v. Am. Airlines*, No. 91-5079, 1992 U.S. App. LEXIS 6796 (10th Cir. Apr. 10, 1992) (claimed breach of collective bargaining agreement a minor dispute); *Allied Pilots Ass'n v. Am. Airlines*, 898 F.2d 462 (5th Cir. 1990) (alcohol testing policy subject to mandatory arbitration because minor dispute).

