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AOR 2011-25

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November 29, 2011

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Pursuant to 2 U.S.C. § 437f and 11 C.F.R. § 112.1, Atlas Air Worldwide Holdings, Inc. ("Atlas Air"), through counsel, hereby submits a request for an advisory opinion from the Federal Election Commission ("FEC" or the "Commission"). Atlas Air requests confirmation that managers and other executive and administrative personnel of its U.S. airline subsidiaries who are not currently acting in the capacity of "professional" employees and who are prevented from full labor union participation, but nevertheless maintain a labor union membership, are within its restricted class, and, therefore, eligible to be solicited for contributions to Atlas Air's separate segregated fund, the Atlas Air Worldwide Holdings, Inc. Political Action Committee ("Atlas Air PAC").

The FEC has jurisdiction over this question pursuant to 11 C.F.R. § 112.1 because Atlas Air is requesting an interpretation of the application of the Federal Election Campaign Act of 1971, as amended, for a specific transaction or activity that Atlas Air plans to undertake. Based on a favorable response from the Commission, Atlas Air plans to solicit its managers described below to participate in the Atlas Air PAC.

**I. BACKGROUND**

Atlas Air has two U.S. airline subsidiaries, Atlas Air, Inc. ("Atlas") and Polar Air Cargo Worldwide, Inc. ("Polar"), which operate all-cargo flights on a global basis pursuant to authority conferred by the U.S. Department of Transportation and the Federal Aviation Administration

("FAA"). Atlas Air, Atlas, and Polar are each incorporated in the State of Delaware. Primarily through these subsidiaries, Atlas Air operates the world's largest fleet of Boeing 747 freighter aircraft. In 2010 Atlas and Polar operated more than 17,000 flights, serving 250 destinations in 90 countries. Atlas Air also provides its customers with related aviation and airfreight services, including schedule analysis and management, route- and traffic-rights management, fuel procurement and administration and ground operations support. Finally, Atlas provides limited passenger service.

Atlas Air Worldwide Holdings, Inc. has no employees, though it does have officers and directors. Atlas Air, Inc. is wholly owned by the parent, Atlas Air Worldwide Holdings, Inc. In Polar Air Cargo Worldwide, Inc., Atlas Air Worldwide Holdings, Inc. holds a 75% voting interest and 51% of the total equity. The remainder of Polar Air Cargo Worldwide, Inc. is owned by DHL Network Operations (USA), Inc., an affiliate of DHL, the large international freight forwarder with German ownership.<sup>1</sup>

The air carrier operations are supported by a number of senior managerial employees, such as each air carrier subsidiary's chief pilot, director of training and director of flight operations administration, who require technical skills in various FAA-regulated areas. These managers are granted significant levels of discretion in their managerial roles, including the ability to hire and terminate employees under their supervision. As managers, their primary duties are not professional or technical skilled work for which specialized education or training is required, but are instead defined by traditional managerial roles.<sup>2</sup> Many of these managers began their Atlas Air career as pilots, were obligated to join a subsidiary's pilots' union, and as a result certain of these managerial employees maintain a membership in the union. By remaining union members while in their managerial positions, the individuals retain their places on the pilot seniority list and their ability to return to line flying should they wish to do so.<sup>3</sup>

The pilots of Atlas and Polar are members of, and represented by, the Airline Professional Pilots Association Teamsters Union Local 1224, affiliated with the International Brotherhood of Teamsters. While active pilots have unlimited membership and participation

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<sup>1</sup> U.S. law prohibits foreigners from owning more than 25% of a U.S. airline's voting stock. The U.S. Department of Transportation separately imposes other limitations to ensure that the airline is actually controlled by U.S. citizens, another requirement of U.S. law.

<sup>2</sup> Representative job descriptions of the affected managers are enclosed with this request.

<sup>3</sup> The terms and conditions of employment of Atlas and Polar pilots are governed by a union-negotiated collective bargaining agreement ("CBA"). Under Section 10.A.4, "[e]xcept as specifically addressed in this Agreement, the terms and conditions of employment for Crewmembers, including the right to appoint and remove Crewmembers who transfer to a management or non flying position, shall be within the discretion of the Company and shall not be subject to the terms of this Agreement. A Crewmember wishing to be released from a management or non-flying position may resign from such position."

rights in the labor union, both the national and local organizations restrict participation by any managerial employee. For instance, the national constitution of the International Brotherhood of Teamsters restricts any employee holding a "supervisory position" with his employer from holding an office within the labor union.<sup>4</sup> Additionally, its constitution provides that its local unions may restrict or limit those who hold supervisory positions to even "participate in the affairs" of their local labor unions.<sup>5</sup> The Teamsters Union Local 1224 has used this limitation, stating in its bylaws that Atlas and Polar managers retain only an "inactive" membership status in the union, thereby limiting their participation rights. Those bylaws explicitly state that an "inactive member shall not be permitted to hold office or vote, and shall have only such right to participate in the meetings and the affairs of the Local Union as shall be uniformly permitted by the Local Union Executive Board."<sup>6</sup> In accordance with these limitations on participation, inactive members pay no union dues, are not subject to union disciplinary procedures, and are not solicited for contributions to the union's PAC, to Atlas Air's knowledge.

As a result of these limitations, promoted managers of Atlas and Polar who are required to maintain a union membership are not permitted to be fully active, participating members of the labor union, nor are they permitted to engage in fundamental union activities, such as voting and holding an office.

## II. LEGAL DISCUSSION

As outlined in the following discussion, the Commission should clarify that certain managerial employees of Atlas Air's two airline subsidiaries ("Atlas Air's managers"), who were once considered "professional employees" under Commission regulations and who are inactive members of a labor union resulting from their former work as a "professional employee" of an Atlas Air subsidiary, are not precluded from Atlas Air's restricted class.

### A. The FEC only limits participation in the "restricted class" based on labor union representation for "professionals" within a corporation's executive and administrative personnel.

The Commission permits a corporation that maintains a separate segregated fund ("SSF") to solicit contributions from and participation by individuals within its restricted class. The "restricted class" of a corporation is comprised of its executive or administrative personnel. Commission regulations define "executive or administrative personnel" as individuals employed

<sup>4</sup> Teamsters Constitution, Art. II, § 2(g), available at [http://teamstersonline.com/forums/blog\\_documents/constitution\\_June2006.pdf](http://teamstersonline.com/forums/blog_documents/constitution_June2006.pdf)

<sup>5</sup> *Id.*

<sup>6</sup> Airline Professionals Association Teamsters Local 1224 Bylaws, § 20(C)(2). A pilot manager does, however, retain the right to attend local or national union meetings.

by a corporation or labor organization who (1) "are paid on a salary rather than hourly basis"; and (2) who have "policymaking, managerial, professional, or supervisory responsibilities." 2 U.S.C. § 441b(b)(7); 11 C.F.R. § 114.1(c).

The Commission has found several different classes of employees – all with different types of job description – to comprise the "executive or administrative personnel" of a corporation.<sup>7</sup> A corporation's (1) managers; (2) professional employees; (3) those with policy-making responsibilities; (4) those with supervisory responsibilities; or (5) Members of the board of directors if compensated by salary or stipend are all individually included within a corporation's restricted class. See 11 C.F.R. § 114.1(c); AOs 2010-04; 2004-32; 1999-20; 1993-16. Within these different categories of employees comprising a corporation's restricted class, however, Commission regulations clarify that union representation only excludes a corporation's professional employees. 11 C.F.R. § 114.1(c)(2)(i).

With regard to determining whether an employee has "policymaking, managerial, professional, or supervisory responsibilities," Commission regulations state that "Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") and the regulations issued pursuant to that Act, 29 CFR part 541, may serve as a guideline in determining whether individuals have policymaking, managerial, professional, or supervisory responsibilities." 11 C.F.R. § 114.1(c)(4). These regulations define administrative personnel as those whose "primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers" and "whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(2)-(3). Conversely, those regulations consider a "professional employee" one that undergoes a "prolonged course of specialized intellectual instruction required for exempt learned professional employees such as medical doctors, architects and archaeologists." 29 C.F.R. § 541.3(a).

FLSA regulations further hold that professional employees are those whose primary duty is performing work that requires either "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction" or "invention, imagination, originality or talent in a recognized field of artistic or creative endeavor." 29 C.F.R. § 541.300(a)(2)(i)-(ii). Examples of those type of professionals provided by the regulations include medical technologists, registered nurses, dental hygienists, chefs, funeral directors and embalmers, teachers, attorneys and physicians. 29 C.F.R. § 541.301, 541.302, 541.304.

As the FEC has held, it is only this latter group of employees, a corporation's "professional" employees, who must be excluded from restricted class SSF solicitations if represented by a labor union. "Individuals who run the corporation's business, such as officers, other executives, and plant, division, and section managers; and professionals such as lawyers and engineers (so long as they are not represented by a labor organization), would qualify as

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<sup>7</sup> A corporation's stockholders and immediate family members of executive or administrative personnel are also within a corporation's restricted class.

executive and administrative personnel. AO 2010-4 (WaWa). AO 1988-11 (NATTS PAC) (holding that teachers represented by a labor union, as professional employees, could not be included within the restricted class).

In approving the final definition of “executive and administrative personnel” (dating to 1976), the Commission incorporated the congressional conference committee report which explicitly intended to limit this distinction to a corporation’s *professional* employees. See FEC Explanation and Justification Part 114, 63 (1977). As stated in the conference report, “[t]he term ‘executive or administrative personnel’ is intended to include the individuals who run the corporation’s business, such as officers, other executives, and plant, division, and section managers, *as well as* individuals following the recognized professions, such as lawyers and engineers, who have not chosen to separate themselves from management by choosing a bargaining representative; but is not intended to include professionals who are members of a labor organization, or foremen who have direct supervision over hourly employees, or other lower level supervisors such as ‘strawbosses.’” H. Conf. Rpt. 94-1057, 62 (94th Cong. 2d Sess., Apr. 28, 1976).

Atlas Air’s managers are not currently professional employees. As discussed previously, they are salaried management employees with extensive responsibilities for setting the direction of their various divisions and departments of Atlas or Polar and supervising multiple employees, as appropriate. As part of their duties, they exercise discretion by setting direction for divisions, determining budgetary allocations, and designing methods to implement Atlas Air’s strategic goals. Pilots in managerial roles also have the ability to hire, fire and promote employees. Those employees are both salaried and hourly employees. While at one time each of these employees held “professional” responsibilities within the subsidiary as pilots, they are not now acting in their previous roles but instead have been promoted to senior-level managers and supervisors within the subsidiary. The policy-making and supervisory responsibilities integral to these managers’ jobs place them within Atlas Air’s restricted class without any limitation based on their inactive union memberships.

By a plain reading of the congressional conference committee report and the Commission’s regulations, neither Congress nor the Commission intended that the professional employee limitation on restricted class membership extends to a corporation’s executive and administrative personnel. While at one time these managers were “professional employees” of Atlas Air’s subsidiaries – and thus subject to this limitation – they are not subject to those same limitations throughout their career with their subsidiaries. The Commission should apply its own precedent in clarifying this limitation for Atlas Air’s managers.

B. Atlas Air’s managers are not truly represented by Atlas Air’s labor union and are therefore not excluded from Atlas Air’s restricted class.

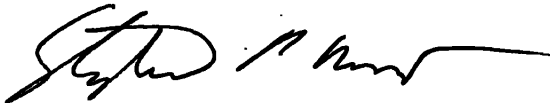
Atlas Air’s managers who maintain a membership in the labor union are generally not “represented” by its union and therefore should not be limited from participating in Atlas Air’s restricted class due to their “inactive” membership with the union. Even if the Commission had extended this limitation to a corporation’s executive and administrative personnel beyond the narrow group of “professional” employees, in this case the labor union members are prohibited

from full, active participation in Atlas Air's labor union and therefore cannot be considered to be fully represented by the labor union.<sup>8</sup> As discussed, the regulations limit from the restricted class those professional employees who are "represented by a labor organization." 11 C.F.R. § 114.1(c)(2)(i). However, Atlas Air's labor union has taken active steps to not represent these managers. For instance, Atlas Air's labor union, as part of its collective bargaining agreement, does not negotiate salaries or benefits for these managers, nor would these managers participate in a union-wide labor stoppage.<sup>9</sup> By not representing the pilot managers, the union has, in essence, recognized that once a pilot switches over to management he is subject to management-established rules, not the CBA. Because these managers are not represented by the labor union, and do not pay dues to retain their inactive union membership, they accordingly may not be limited from participation in Atlas Air's restricted class.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should clarify that Atlas Air's managers may not be excluded from participation in the Company's SSF because they are properly considered part of the restricted class. Because Atlas Air's managers are not "professional" employees as defined by Commission regulations, they are not within the narrow exclusion for certain professional employees when represented by a labor union. Furthermore, even if they were considered "professional employees," Atlas Air's labor union and the International Brotherhood of Teamsters have placed significant limitations on a manager's participation in Atlas Air's labor union which can no longer be considered to "represent" them as contemplated by FEC regulations. Therefore, the Commission should clarify that the managers are part of Atlas Air's restricted class.

Sincerely,



Stephen P. Roberts

Enclosures

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<sup>8</sup> The labor union would, however, represent a management pilot in case of a grievance against senior management if asked to do so.

<sup>9</sup> As indicated above in fn. 3, the conditions of employment for Crewmembers who transfer to a management or non flying position are not governed by the CBA.

**ENCLOSURES**



POLAR AIR CARGO



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## POSITION DESCRIPTION

**Title:** Chief Pilot  
**Grade:** 20  
**Location:** Purchase, NY  
**Department:** Flight Operations  
**Reports To:** VP Flight Operations

**Position Summary:** This position is responsible for checking and reviewing the performance and line qualifications of all crewmembers.

**Values and Behavioral Standards:** To ensure the effective communication and application of company values and behavioral standards, as stated in our company "Code of Conduct" policy, and to respond appropriately in the event of any known departure.

**Major Job Accountabilities:**

- Monitor and maintain Flight Crewmember Certification on a daily, monthly and annual basis.
- Determine and recommend the necessity and extent of discipline involving crew matters.
- Track IOE consolidation requirements to insure FAR compliance.
- Responsible for evaluating procedural changes to Polar aircraft operation that will enhance safety and efficiency.
- Responsible for tracking and reviewing special airport and route qualifications for all crewmembers. This includes any recommendations for additional Polar special Airport information.
- Responsible for the selection of Line Check Airmen and maintenance of their qualifications. It will also include determining agenda and scheduling of the quarterly Line Check Airmen meeting.

**Qualifications:**

- Must hold an Airline Transport Certificate with a B747 rating with at least 3 years experience, within the past 6 years, as pilot in command of a large airplane operated under Part 121.
- Must possess the leadership, authority and administrative skills necessary to support the activities of our Flight Crewmembers.
- Must have strong interpersonal, analytical, administrative, technical and communication skills.
- Previous managerial experience desired but not required.



**Prepared by:**

**Revised:**

**Date:**

**Date:**

**The employee is expected to adhere to all company policies and to act as a role model in the adherence to company policies.**

**I have read and understand this explanation and job description.**

**Signature: \_\_\_\_\_ Date: \_\_\_\_\_**



**POSITION DESCRIPTION**

**Title:** Director of Training & 400 Fleet Manager  
**Grade:** 17  
**Location:** Miami, FL  
**Department:** Flight Operations  
**Reports To:** Vice President Flight Operations

**Position Summary:** This position is responsible for training records, aircraft operations manuals, and flight operations training manuals.

**Values and Behavioral Standards:** To ensure the effective communication and application of company values and behavioral standards, as stated in our company "Code of Conduct" policy, and to respond appropriately in the event of any known departure.

**Major Job Accountabilities:**

- Specifically maintain the following Job Aids
- AIMS (Training records)
- Aircraft Operations Manuals (FHB, Classic and B747-400)
- Flight Operations Training Manual
- Key manuals, checklists and SOPs for all functions within the department
- Manage Department to meet or beat budget
- Establish and meet effective unit cost targets for Flight Operations (Crews)
- Establish and meet effective unit cost targets for Travel (Training)
- Maintain a safe operation and workplace through communication, audit, review and training
- Ensure compliance with all Corporate policies and key processes
- Ensure compliance with ATEV requirements
- Ensure compliance with Capital Expenditure Approval requirements
- Ensure compliance with Schedule Service Flight Schedule Change process
- Input, maintain (i.e., audit and edit) and report accurate, consistent and timely data processed in the following transaction processing systems and database
- AIMS
- Navtech
- Continuously identify, evaluate and implement key process improvement initiatives to improve overall service levels
- Maintain effective intra-departmental communications and coordination
- Maintain effective inter-departmental communications and coordination
- Maintain effective customer communications and coordination
- Flight recovery (Non-routine flight operations)
- Deliver the maximum availability of aircraft to Sales & Marketing to ensure high daily utilization rate
- Coordinate with the Marketing and Planning and Business Development departments to evaluate and plan future operations
- Effectively and economically manage crew resources
- Proper flight crew staffing and basing

- Effective scheduling of crew training
- Cost effective crew training travel
- Maintain effective and economic training throughout the department.
- Ensure all training programs are current, compliant, effective, and streamlined
- Crew training (Turner/Welty/Agnini/Bryant)
- Check airman training
- Continuously identify, evaluate and implement key cost saving initiatives through the following
- Effective data collection and analysis from AIMS
- Effective use of Flight Operations Management Report
- Total Information Systems Integration
- Route planning
- Travel cost viability
- Fuel monitoring and conservation program
- Ensure FAA and TSA compliance
- Maintain regulatory compliant operating practices
- Meet applicable legal requirements
- Comply with the Air Carrier Voluntary Self-Disclosure program
- Maintain effective Labor Relations
- Ensure Contract compliance
- Maintain workforce discipline
- Maintain professional and effective liaison programs with
- Air Transport Association (ATA)
- Boeing Aircraft
- Air Line Pilots Association (ALPA)
- Federal Aviation Administration (FAA)
- Air Mobility Command (AMC)
- IATA
- Support the company with effective documentation services to create and deliver manuals at the right time, to the correct location and with the proper quality.
- Continually refine processes and select capable vendors to ensure
- Employee business travel is properly authorized
- Achieve lowest effective travel cost
- Ensure compliance with travel and entertainment policy
- Effectively report travel related performance data as structured reports

**Qualifications:**

- Degree preferred
- Eight to ten years experience
- Well suited for an entrepreneurial environment which is extremely fast paced with high rates of growth
- Ability to lead and interact with the senior levels of the organization
- Comfortable rolling up sleeves in a lean environment where limited structure and policy currently exist
- Strong team, interpersonal and communication skills
- Ability to be supportive and mentally tough

Prepared by:

Revised:

Date:

**Date:**

**The employee is expected to adhere to all company policies and to act as a role model in the adherence to company policies.**

**I have read and understand this explanation and job description.**

**Signature: \_\_\_\_\_ Date: \_\_\_\_\_**



**POLAR AIR CARGO**



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## POSITION DESCRIPTION

**Title:** Director of Training & 200 Fleet Manager  
**Grade:** 17  
**Location:** Miami, FL  
**Department:** Flight Operations  
**Reports To:** Sr. Director of Training Resources

### **Position Summary:**

This position is responsible for the overall training records, aircraft operations manuals, and flight operations training manuals.

### **Values and Behavioral Standards:**

To ensure the effective communication and application of company values and behavioral standards, as stated in our company "Code of Conduct" policy, and to respond appropriately in the event of any known departure:

### **Major Job Accountabilities:**

- Specifically maintain the following Job Aids
  - AIMS (Training records)
  - Aircraft Operations Manuals (FHB, Classic and B747-400 as appropriate)
  - Flight Operations Training Manual
  - Key manuals, checklists and SOPs for all functions within the department
- Manage Department to meet or beat budget
  - Establish and meet effective unit training cost targets for Flight Operations (Crews)
  - Establish and meet effective unit cost targets for Travel (Training)
  - Maintain a safe operation and workplace through communication, audit, review and training
  - Ensure compliance with all Corporate policies and key processes
- Ensure compliance with ATEV requirements
- Ensure compliance with Capital Expenditure Approval requirements
- Ensure compliance with Schedule Service Flight Schedule Change process
- Input, maintain (i.e., audit and edit) and report accurate, consistent and timely data processed in the following transaction processing systems and databases
  - AIMS
  - Navtech/FWZ

- Continuously identify, evaluate and implement key process improvement initiatives to improve
  - overall service levels
- Maintain effective intra-departmental communications and coordination
- Maintain effective inter-departmental communications and coordination
- Maintain effective customer communications and coordination
- Flight recovery (Non-routine flight operations)
- Coordinate with the Marketing and Planning and Business Development departments to evaluate and plan future operations
- Effective scheduling of crew training
- Cost effective crew training travel
- Maintain effective and economic training throughout the department.
  
- Ensure all training programs are current, compliant, effective, and streamlined
  - Crew training
  - Check airman training
  
- Continuously identify, evaluate and implement key cost saving initiatives through the following:
  - Effective data collection and analysis from AIMS
  - Effective use of Flight Operations Management Report
- Fuel monitoring and conservation program
- Ensure FAA and TSA compliance
- Maintain regulatory compliant operating practices
- Meet applicable legal requirements
- Comply with the Air Carrier Voluntary Self-Disclosure program
- Maintain effective Labor Relations
- Ensure CBA (Collective Bargaining Agreement) compliance
- Maintain workforce discipline
- Maintain professional and effective liaison programs with
  - Federal Aviation Administration (FAA)
  - Air Transport Association (ATA)
  - Boeing Aircraft
  - Air Line Pilots Association (ALPA)
  - Air Mobility Command (AMC)
  - IATA
- Continually refine processes to ensure
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  - Achieve lowest effective travel cost
  - Compliance with travel and entertainment policy

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- Comfortable rolling up sleeves in a lean environment where limited structure and policy currently exist
- Strong team, interpersonal and communication skills
- Ability to be supportive and mentally tough

Prepared by:

Revised:

Date:

**Date:**

**The employee is expected to adhere to all company policies and to act as a role model in the adherence to company policies.**

**I have read and understand this explanation and job description.**

**Signature: \_\_\_\_\_ Date: \_\_\_\_\_**