IN THE MATTER OF THE ARBITRATION BETWEEN

AMERICAN AIRLINES, INC.

AND Prefunding Arbitration

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

Hearings held November 17, 18, 2015
Before Richard I. Bloch, Esq.

APPEARANCES

For the Company:
Robert A. Siegel, Esq.
Chris A. Hollinger, Esq.

For the Union:
Richard S. Edelman, Esq.
David Rosen, Esq.

OPINION

Facts

The facts of this matter are not in dispute. As part of restructuring negotiations surrounding the 2011 Bankruptcy declaration by American, the parties agreed to a Side Letter, ultimately incorporated into the 2012 Collective Bargaining Agreement ("CBA"), which provided for the return of active employees' prefunding contributions to the Retiree medical program. The parties also agreed to circumstances under which Company matching contributions would be distributed to the employees, contingent on

the Company's pursuing and achieving a "successful resolution" of efforts to be released from its then-current obligations to subsidize the Retiree health benefits program. The Company exited bankruptcy in 2010. It has distributed the employees' portions of the contributions, but, to date, the matching contributions have not been disbursed. The Union contends the Company's failure to do so amounts to a violation of the CBA.

Hearings were held on November 17 and 18 in Washington, D.C. Both sides were represented by counsel, a verbatim transcript was made, testimonial and documentary evidence was introduced and, following the conclusion of the hearings, the parties submitted post-hearing closing arguments.

Issue

Whether the TWU's claim in the third paragraph of the amended Grievance should be sustained.

The above-referenced claim is as follows:

> Alternatively, TWU contends that the unexpected continuation in existence of the Trust for a period of more than two years, with the trust continuing to retain the matching contributions made on behalf of each contributing participant in the Prefunding Program despite the mutual understanding that the Section 1114 process would be promptly initiated and resolved, requires that all contributing participants who retired or retire after November 1, 2012, and who are covered by the retiree medical plan under Article 41(1) of the current CBA, be allowed to draw down the Company's matching contributions made on their behalf as was provided in former section (n) of Article 41(n) (7). This means that the account of each Participant—Retiree may be drawn down by 10% each year, and the amount thus drawn down be applied as a subsidy to the individual's retiree health insurance expenses. In connection with and in justification of the claim, TWU asserts that nothing in the agreements reached during the 1113 process warrant the elimination of Article 41 provisions related to the Prefunding Program, except for the requirement for continuing Company contributions until termination of the Trust or resolution of the Section 1114 process described in the September

12, 2012 letter to Robert Gless from James Weel that is attachment 41.1 to the current CBA [Joint Ex. 14 and 20][1]

Positions of the Parties

Union Position

Despite the Company's promise that the §1114 proceeding would be promptly initiated and resolved, the matter is still before the court, and the Trust fund has continued to exist for more than (now) three years. Under the circumstances, says the TWU, the Company should be ordered to now fulfill its contractual commitments by drawing down the pre-funded retirement accounts of each post-implementation retiree (those who retired on or after November 1, 2012) over 10 years and applying those increments against the cost of those participants' post retirement health insurance.

Company Position

The Company maintains that, absent its being fully released from the existing health care subsidies, any distribution or application of contributions to the accounts of post-implementation retirees would be contrary to the express terms of the collective bargaining agreement. Neither pre- nor post-bankruptcy labor agreement language

[1] The parties stipulated that other issues raised in its Amended Grievance would be held in abeyance and may be "Raised For Resolution By Either Party In A Subsequent Hearing Over Which Arbitrator Bloch Will Retain Jurisdiction". Those issues are:

> 1) Whether, as alleged by the TWU in the second paragraph of the Amended Grievance, the collective bargaining agreements require that the Company must "distribute to each TWU represented individual who received the return of certain employee contributions to the Pre-funding Plan, those associated employer contributions that were made to the Pre-Funding VEBA Trust by AA as contractually required matching distributions,"
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> 2) Whether, as alleged by the TWU in the fourth paragraph of the Amended Grievance, the Company should be "ordered not to use the Employer contributions" which matched employee contributions by TWU participants who retired on or after November 1, 2012 "for any purpose other than providing health benefits to these individuals. . . ."

supports the finding of a contract violation or the relief requested by the TWU, says the Company. It requests that the grievance be denied.

Relevant Contract Provisions

A. American-TWU 1992 Memorandum of Understanding (Jt. Ex 23).

1. The Trust Agreement and the Trust which holds Plan assets is established for the exclusive benefit of TWU—represented active employees and retired employees who were represented by the TWU at the time of retirement.

2. The Trust will maintain a separate account to hold reserves equal to Participants' prefunding contributions, Employer prefunding contributions and investment earnings attributable thereto reserved for retiree welfare benefits due to Participants under the terms of the Plan and to pay administrative expenses associated with such Program... In no event will these reserves be used for payment of any expenses associated with the Active Employees Medical Benefits Program or for any other purpose except those identified with respect to retiree welfare benefits in this Memorandum, the Trust Agreement and the Plan.

3. Employees participating in the Retiree Prefunded Benefits Program will make a monthly contribution to the Trust Fund.

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4. American Airlines will make a monthly matching contribution on behalf of each employee contributing under the Retiree Prefunded Benefits Program. That contribution amount is identical to the amount required to be contributed by each participating employee in accordance with No. 3 above.

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7. At retirement, an eligible participating retiree's own contributions and the matching Employer contributions made on his or her behalf to the Retiree Prefunded Benefits Program plus investment earnings attributable thereto are drawn down in ten equal annual installments for the purpose of providing retiree medical coverage. However, exhaustion of the funds in a retiree's account under this provision does not waive or modify the retiree's entitlement to continued medical coverage under the collective bargaining agreement or the terms and limitations of the Plan. Should an eligible retiree die

during the ten year draw down period, any remaining contributions continue to draw down for the period of the surviving spouse's medical coverage, if any. . .If there is no surviving spouse, the balance of the employee's contribution is paid to the designated beneficiary.

8. In case of death or termination of employment by a participating active employee, employee contributions to the Retiree Prefunded Benefits Program plus investment earnings attributable thereto will be distributed as a severance or death benefit, as applicable, to the employee or the employee's designated beneficiary(ies).

American-TWU 2012 CBA (Jt. Ex. 14).

Attachment 41.1 (the "September 12, 2012 side letter").

Dear Robert,

During the restructuring agreement negotiations, the parties agreed that upon implementation of the changes to the Retiree medical plan program an active employee who currently prefunds for retiree medical will be refunded the employee's prefunding account (which reflects investment experience), excluding employees who have already received employee prefunding refunds.

In addition, the parties agreed that contingent on the successful resolution of the Section 1114 process, as soon as practicable after termination of the Trust Agreement for the Group Life and Health Benefits Plan for Employees of Participating AMR Corporation Subsidiaries (Union Employees), the Company prefunding contributions for each participating active employee, and investment earnings attributable thereto, will be distributed to the employee (subject to applicable tax withholdings and/or excise tax), excluding employees who have already received refunds of their employee prefunding accounts. The refund will be made to the employee no later than 120 days following September 12, 2012.

Article 45 — Effect On Prior Agreements

This agreement will supersede and take precedence over prior Agreements, Letters, and similarly related documents executed between the Company and the Union prior to the signing of this Agreement. However local or station work rules, which were previously negotiated and do not conflict with this Agreement will remain in effect. All rights and obligations, monetary or otherwise, which may have accrued because of services rendered prior to the effective date of this Agreement, will be satisfied or discharged.

Stipulation as to 1993 Trust Agreeement[2]

Pursuant to the 1992 MOU, the 1990 Trust Agreement was amended effective Jan. 1, 1993 (the "1993 Trust Agreement") The 1993 Trust Agreement provided that:

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f. The Company's "matching contributions and attributable investment earnings shall be reserved exclusively for the payment of Retired Participant's medical and disability benefits described in the Plan, and to defray reasonable expenses of administration incurred in the operation of the Plan and this Trust." (Section 2.07(b), as amended; and

g. In the event of termination of the Trust, "no instrument of termination or amendment shall authorize or permit, at any time prior to the satisfaction of all liabilities with respect to the Participants and their beneficiaries under the Plan, any part of the corpus or income of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of such Participants and their beneficiaries." (Section 6.03(a) –Termination, as amended.) If the Trust was terminated, "Retired participants [would] receive the value of their own employee contributions less amounts previously drawn down," and, subject to Internal Revenue Service approval, "Pre-Funding Participants who [were] then active employees [would] receive the value of their employee contributions." (Section 6.03(b), as amended.) The Company matching contributions plus investment earnings "[would] be used for the exclusive benefit of Participants" in the event of Trust termination. (Section 6.03(c), as amended.

Analysis

Beginning in 1968, American Airlines (hereinafter "Company" or "American") agreed with the Transport Workers Union ("Union" or "TWU") to provide health insurance, at Company expense, to TWU-represented employees and to retirees who had been bargaining unit members when active. Increasing health care costs and changes in accounting standards relevant to retiree health care liabilities led the

[2] Stip. of Facts, p.5. Amendments were executed by American and NationsBank of Texas to the 1990 Trust Agreement, incorporating changes necessitated by the 1992 MOU. (*Id.*, n.5.)

Company, in 1989, to inform the Transport Workers Union of the need to establish a "pre-funded" arrangement wherein active employees would pre-fund their post-retirement medical coverage by paying a portion of the expenses. The parties' agreement on such a program was codified in the 1989 American/TWU Labor Agreement, which became effective January 1, 1990.[3] A Voluntary Employees' Beneficiary Association ("VEBA") was formed, together with a Trust to hold pre-funding contributions. However, not all employee groups participated in the pre-funding VEBA program[4] and, as a result, it was necessary for the Company and Union to agree on provisions that would ensure, among other things, that contributions of TWU represented employees would not be used for purposes other than post-retirement healthcare for retirees represented by the Union at retirement.[5] A 1992 Memorandum of Understanding ("1992 MOU")[6] provided, among other things, that Trust assets would be used for "the exclusive benefit of TWU-represented active employees and retired employees who were represented by the TWU at the time of retirement,"[7] The Trust would maintain a separate account to hold contributed funds, as well as the investment earnings attributable thereto. Additionally, in an effort to encourage maximum participation (and thus reduce coverage costs), the Company proposed to match employee contributions. At retirement, contributions made by or on behalf of each participant would be drawn down in ten equal annual installments "for the purpose of

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[3] Stip. of Facts,¶ 4; Jt. Ex. 21. Thereafter, other organized and non-organized groups established similar pre-funding programs. (Decl. of Mary Anderson, ¶ 12.)
[4] See the 1991 Interest Arbitration Award, Koziatek Ex. 1 and Stipulated Facts ¶ 8.
[5] Stip. of Facts ¶ 8.
[6] Jt. Ex. 23.

[7] Id., Section 1.

providing retiree medical coverage."[8] Under the Program, while records were kept as to the amount of each Participant's pre-funding contributions and the Company's matching contribution, the funds themselves were commingled in the master trust and invested together.[9] When a participating employee retired, the contributions of both employee and Company became the source for the annual 10 percent draw down, a sum utilized generally[10] to support some of the medical expenses of the entire group of TWU retirees.

In November 2011, American filed for Chapter 11 relief under the Bankruptcy Code.[11] Included in a wide ranging plan to cut costs was American's goal to entirely eliminate Company health care subsidies for both active employees and then-current retirees: The retiree medical plan would remain, but it would be fully funded by participating employees.[12] Prefunding contributions, it was agreed, would be refunded. A September 12, 2012 side letter to the AA/TWU 2012 Labor Agreement records the parties' agreement on that point. The first paragraph discusses the employee pre-funding contributions:

> ... During the restructuring agreement negotiations, the parties agreed that upon implementation of the changes to the Retiree Medical Plan Program an active employee who currently pre-funds for retiree medical will be refunded the employee's pre-funding account (which reflects investment experience), excluding employees who have already received employee pre-funding refunds.

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[8] *Id.*, ¶ 7.
[9] Anderson Decl. ¶ 7; Tr. 234:15-17.
[10] Anderson Decl. ¶ 10, see also Tr. 221:16-22, 222:16-19.
[11] Stip. of Facts, ¶ 12.
[12] Weel Decl. ¶ 5

The second paragraph addresses the Company matching funds, which are also to be distributed, but only upon occurrence of a meaningful contingency, highlighted in the language below:

> In addition, the parties agreed that *contingent on the successful resolution of the Section 1114 process*, as soon as practicable after termination of the Trust Agreement for the Group Life and Health Benefits Plan for Employees of Participating AMR Corporation Subsidiaries (Union Employees), the Company pre-funding contributions for each participating active employee, and investment earnings attributable thereto, will be distributed to the employee (subject to applicable tax withholdings and/or excise tax), excluding employees who have already received refunds of their employee pre-funding accounts. The refund will be made to the employee no later than 120 days following September 12, 2012.[13]

Unlike the refund of employee contributions, which occurs "upon implementation of the changes to the Retiree Medical Plan Program …," the distribution of Company pre-funding contributions is specifically "contingent on the successful resolution of the Section 1114 process."

In this case, there is no disagreement either as to the meaning of "successful resolution," -- relief from continuing subsidization of the Retiree health program -- or to the fact that the Company has not been successful in that quest.[14] Rather, the parties differ as to whether the Company has pursued the relief expeditiously (see the Grievance, below) and whether the requested remedy is appropriate.

The Union maintains that the extended delay in moving the case through the courts requires that the Company be ordered to distribute the 10 percent draw down to bargaining unit members who retired after October 31st, 2012. The draw down

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[13] Jt. Ex. 14. (Italics added.)
[14] Stip. of Facts, ¶17.

obligations set forth in Article 41 of previous CBA's remain extant and binding, it is claimed. For ease of reference, the Grievance is restated here:

> … TWU contends that the unexpected continuation in existence of the Trust for a period of more than two years, with the trust continuing to retain the matching contributions made on behalf of each contributing participant in the Prefunding Program despite the mutual understanding that the Section 1114 process would be promptly initiated and resolved, requires that all contributing participants who retired or retire after November 1, 2012, and who are covered by the retiree medical plan under Article 41(1) of the current CBA, be allowed to draw down the Company's matching contributions made on their behalf as was provided in former section (n) of Article 41(n) (7). This means that the account of each Participant—Retiree may be drawn down by 10% each year, and the amount thus drawn down be applied as a subsidy to the individual's retiree health insurance expenses. In connection with and in justification of the claim, TWU asserts that nothing in the agreements reached during the 1113 process warrant the elimination of Article 41 provisions related to the Prefunding Program, except for the requirement for continuing Company contributions until termination of the Trust or resolution of the Section 1114 process described in the September 12, 2012 letter to Robert Gless from James Weel that is attachment 41.1 to the current CBA. [Joint Ex. 14 and 20]

It is clear enough, from the terms of the 2012 Side Letter, that the parties intended the overall resolution process to be implemented and, hopefully, resolved expeditiously, so as to clear the way for distributing the Company's contributions. The first sentence of the second paragraph (see p. 9, *supra*) specifies that the distribution will occur "as soon as practicable after termination of the Trust agreement …" and the second sentence requires that the refund be made "no later than 120 days following September 12, 2012." But, such obligations are premised on the Company having claimed a "successful resolution of the Section 1114 process." There is no evidence in the record that the Company was somehow dilatory in initiating or pursuing the §1114 process. To the contrary, it initiated what is stipulated to be the §1114 Adversary Proceeding against the "Section 1114 Retiree Committee", seeking a declaratory

judgment that the Company could unilaterally modify the Retiree insurance program on the theory that the Retiree health care benefits had not vested. That action was filed in July of 2012, months before the Side Letter was executed. A Motion for Partial Summary Judgment on the question was filed August 15, 2012. The court declined to issue the sought after declaratory judgment, the subsequent Motion for Partial Summary Judgment was denied, and the matter is still before the court. There has been no showing that the processing delays may fairly be placed at the Company's feet[15] and, in the overall, there is no reason to conclude that these facts prove a violation.

Even assuming one could identify a contractual premise for a remedy in the absence of the contingency's having been satisfied, the request that the funds be drawn down to the individual accounts of post-implementation retirees reflects a potential misunderstanding of the nature of the agreement giving rise to the matching contributions and of the clear and consistent practice in administering those funds. The Union contends, however, that Article 41(n)(7) of previous CBAs (1) continues in force and (2) establishes an independent contractual ground for requiring continuance of the 10 percent draw down, with the amount being applied as a subsidy to individual post-implementation retiree health insurance expenses.[16] Article 41(n)(7)[17] stated:

> At retirement, an eligible participating retiree's own contributions and the matching Employer contributions made on his or her behalf to the Retiree Prefunded Benefits Program plus investment earnings attributable thereto are drawn down in ten equal annual installments for the purpose of providing retiree medical coverage. However, exhaustion of the funds in a retiree's account under this provision does not waive or modify the retiree's entitlement to continued medical coverage under the collective bargaining agreement or the terms and limitations of the Plan. Should an

[15] One notes that an extensive amount of time was consumed prior to the court's rendering a decision on the motion because of procedural battles waged by the Section 1114 Committee opposing the Company's motion.
[16] See Statement of Grievance, *supra*, p.9.
[17] The 1992 MOU was incorporated into the AA/TWU labor agreements in 2003 as Article 41.

> eligible retiree die during the ten year drawn down period, any remaining contributions continue to draw down for the period of the surviving spouse's medical coverage, if any. After the surviving spouse's coverage terminates or if such spouse dies before the balance of the Account is drawn down, the balance of the employee's contribution is paid to the spouse's estate. If there is no surviving spouse, the balance of the employee's contribution is paid to the designated beneficiary.

The Union maintains that, while the Company's obligation to match contributions ceased as a result of Section 45, nothing served to relieve the Company of obligations accrued in the past: "Company compliance with its commitment to use the funds it contributed to match the monthly contributions of employees for the purpose of partial payment of retiree healthcare costs," says the Union, "is precisely the type of obligation addressed by Article 45."[18] The Company, for its part, says any bargained obligations contained in Section 41 were extinguished under the new labor agreement by virtue of Article 45's having "[superceded] and taken precedence over prior agreements … executed between the Company and the Union prior to this Agreement."[19]:

This language, the Company argues, supports the conclusion that the draw down process was, by mutual agreement, no longer required; that, pursuant to the parties' recognition of the Company's intent to be relieved of any continuing financial obligations, the parties agreed to the refunding mechanisms set forth in the September 12, 2012 side letter, including distribution of Company prefunding contributions that was premised on "successful resolution of the Section 1114 process."

The Union's argument in this context is unavailing for several reasons. First, while it is true that Article 45 specifically maintains rights and obligations that accrued as a result of prior services rendered, this does not require the conclusion that Company

[18] Union Br., p. 35.
[19] Article 45, *supra*, p.5

match funds attributed to Union employees' notional accounts remain subject to being drawn down, as had been previously required under Section 41(n). The contracted for contributions, it should be recalled, have not disappeared; they remain where they always were -- in the commingled funds, available, in fact, for the distribution promised by the Company upon successful resolution of the financial subsidies issue. But they are not subject to the Section 41 drawn down process that was explicitly superseded by Article 45.

Inherent in the Union's proposed remedy is an assumption that the individual participants should be able to "take possession" of the Company contributions for their individual use (in this case, as an offset against insurance costs.) But as will be discussed below, the record, taken in the overall, does not support that interpretation,

The Union directs the arbitrator's attention to Article II, Section 2.07 of the 1993 Trust agreement, which states, in relevant part: "... Employer matching contributions and attributable investment earnings shall be reserved exclusively for the payment of Retired Participant**t's** medical and disability benefits described in the Plan, and to defray reasonable expenses of administration incurred in the operation of the Plan and this Trust."[20] The use of the singular possessive in the word "Participant", says the Union, underscores the conclusion that matching contributions and their earnings must be dedicated solely to individual Participants rather than being available for TWU-represented employees/retirees as a whole. From this, the Union concludes that "the 1992 MOU and related documents demonstrate that American committed that the funds it contributed to match each employee's pre-funding contributions would be for the benefit of those employees as individuals, and would be there to be drawn down to

[20] Jt. Ex. 25, *supra*, p. 6, emphasis supplied.

partially pay for each Participant's post-retirement medical costs."[21] Thus, says the Union, at the time American made its bankruptcy filings, it continued to be bound by an original promise, contained in the 1992 MOU, to match each employee's pre-funding contributions, which would be maintained for the benefit of those same employees as individuals. While the Company may have been relieved of continuing matching contributions, the individual employee's right to draw down funds, including Company contributions, continued.

However, the lone "single possessive" reference, when viewed in the context of the documents and the practice, taken in their entirety, cannot support the conclusion that the parties intended individual access to matching contributions, in the manner here proposed by the Union. Nowhere else in either the MOU or any other documents dealing with matching contributions is the term "Participant" referenced in the singular possessive. Universally, the written references in contracts and trust documents refer to matching contributions as being directed to, and utilized for, retirees in the aggregate. The MOU speaks to Participants in the collective sense ("the Trust will maintain a separate account to hold reserves equal to Participants' pre-funding contributions, Employer pre-funding contributions and investment earnings attributable thereto reserved for retiree welfare benefits due to Participants under the terms of the Plan and to pay administrative expenses with such program ..."). The understanding that there be no individual ownership of the employer contribution, as contrasted with that of the employee, is reflected, for example, in ¶7 of the MOU, which specifies, in relevant part, that: "Should an eligible retiree die during the 10-year drawdown period, any remaining [employer and employee] contributions continue to draw down for the period of the

[21] Union brief, p. 31.

surviving spouse's medical coverage, if any ... if there is no surviving spouse, the balance *of the employee's contribution* is paid to the designated beneficiary."[22] In the case of death or termination of employment by a participating active employee, his or her contributions to the Retiree Pre-Funded Benefits Program, but not matching sums, are distributed as a severance or death benefit to the employee or the designated beneficiary. [23] The Trust agreement, as well, speaks to payment of medical, disability and death benefits for "retired Participants", Section 6.03(b) specifying that, in the event of termination of the Trust, retired Participants will receive "*the value of their own employee contributions* ...". [24]

In addition to the bargained language, the parties' practice in administering the retiree health system weighs heavily in favor of the Company's interpretation. For some 20 years, the clear and consistent practice of the parties has been that, in cases of terminating of pre-funding program, either for a work group generally or by an individual, employees' received their own pre-funding contributions and associated investment earnings. However, Company matching contributions were in every case directed to the payment of medical benefits of the group.[25] There has never been a challenge by the Union to these actions.

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[22] 1992 MOU, ¶7, *supra*, p. 4, italics supplied.
[23] Id.,¶8,p.5.

[24] 1993 Trust Agreement, §6.03, Jt. Exhibit 24, italics supplied.
[25] Anderson states that at the time of the bankruptcy filing, the Company had discontinued pre-funding programs for management, support staff, and the ARPs, and had also reached agreements with the TWU-represented Maintenance Control Technicians and ground instructors to remove active employees from the pre-funding program. Anderson declared:

> In each instance, the Company returned the active employees' individual pre-funding contributions along with the income earned from investments. The corresponding Company matching contributions always were forfeited and retained in the applicable

The conclusion, therefore, is that the September 12, 2012 side letter, read in conjunction with Article 45 of the current collective bargaining agreement, did substantially modify the previous treatment of Company matching contributions, making them, for the first time, subject to distribution to employees, but only assuming satisfaction of the bargained contingency discussed herein. That the "successful resolution" has not been met is fatal, in this case, to the claim that the Company has breached a contractual obligation. Neither the various documents and bargained agreements nor any other evidence as to their application in practice supports the Union's argument that the parties agreed to a partial distribution by means of a 10 percent drawdown under the circumstances here at issue. For these reasons, the grievance must be denied.

Nothing in this Opinion, however, should be read as concluding that the Company's obligation to distribute the matching funds has somehow been extinguished. The finding herein is limited to the observation that there exists no current obligation to do so.

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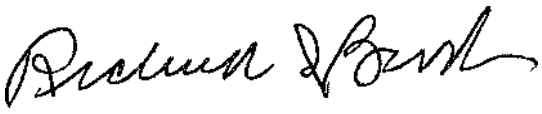
trust for use by the Company to defray some of the costs of the medical expenses of already-retired employees from the relevant work group. (Anderson Decl.¶14)

Other instances when the Company returned the employee contributions but retained the Company's matching funds included employees (1) opting out of the standard plan and moving into the alternative Retiree Point of Service Medical Plan; 2) dying without a surviving spouse; (3) dying with a surviving spouse who opted out of the plan; (4) opting out of coverage; or (5) separating from the Company through termination or resignation prior to retirement. (Anderson Decl., ¶14. See also ¶15.) According to the record, there has never been an objection registered with respect to the Company's maintaining the employer matching contributions in the applicable Trust for purposes of defraying medical expenses of already-retired employees in the relevant work group. Tr. 232:15-233:12, 236:14-237:22.

AWARD

The grievance in this matter is denied.



Richard I. Bloch, Esq.

Feb. 29, 2016