THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK
CIVIL ACTION NO.: 3:15-CV-00111-RJC-DCK

US AIRLINE PILOTS ASSOCIATION,

Plaintiff,

vs.

ROGER VELEZ, on behalf of himself and all similarly situated former America West Pilots, and LEONIDAS, LLC,

Defendants.

EDDIE BOLLMEIER, BILL TRACEY and, SIMON PARROTT,

Plaintiffs,

v.

GARY HUMMEL, STEPHEN BRADFORD, ROB STREBLE, STEVE SMYSER, ROBERT FREAR, COURTNEY BORMAN, and JANE DOE BORMAN, RONALD NELSON, PAUL DIORIO PAUL MUSIC, JOHN TAYLOR, JOE STEIN, PETE DUGSTAD, JAY MILKEY, and STEPHEN NATHAN,

Defendants.

SUPPLEMENTAL RESPONSE IN FURTHER SUPPORT OF USAPA DEFENDANTS' MOTION TO VACATE THE ORDER OF MARCH 5, 2015, OR, IN THE ALTERNATIVE, TO DISMISS THE *BOLLMEIER* VERIFIED COMPLAINT AND IN FURTHER OPPOSITION TO THE *BOLLMEIER* PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

Defendants GARY HUMMEL, STEPHEN BRADFORD, ROB STREBLE, STEVE SMYSER, JOHN TAYLOR, JOE STEIN, PETE DUGSTAD, JAY MILKEY and STEPHEN NATHAN submit supplemental exhibits to their Motion to Vacate the Order of March 5, 2015, or, in the Alternative, to Dismiss the Verified Complaint in the *Bollmeier* action (Docs. 22 to 22-6, 39), and their opposition to the *Bollmeier* plaintiffs' Motion for a Temporary Restraining Order or Preliminary Injunction (Docs. 24 to 24-3, 27 to 27-7, 30). Significant events that may aid the Court in deciding these pending motions have occurred since the motions were fully briefed and necessitate submission of additional exhibits as provided herein.

Relevant Background and Recent Events

As alleged in the complaint herein, on September 16, 2014, USAPA was decertified as the certified bargaining representative of the former US Airways pilots, and on that date, the Allied Pilots Association ("APA") was certified as the exclusive certified bargaining representative for all New American Airlines pilots, including the former US Airways pilots. (Complaint, Doc. 1, at 4 (¶4), 17) Also on that date, the USAPA National Officers, exercising the authority granted to them under the USAPA Constitution and Bylaws, decided to defer dissolution of USAPA. In addition, further exercising their authority under the USAPA Constitution and Bylaws, the USAPA National Officers decided not to make any distribution of USAPA's assets in that there were then and in the future various matters implicating the need for "collective legal action on behalf of the pilot group, including but not limited to representation in seniority list integration" (USAPA Constitution and Bylaws, Doc. 1-2, at 7 (Art. I, Section 3)), that made distribution imprudent and impractical. Complaint, Doc. 1, at 11 (¶31).[1]

In March, 2015, the *Bollmeier* plaintiffs commenced their LMRDA § 501 action against

[1] Alleging these basic facts, but stating the National Officers "purported to act pursuant to Article I, Section (C) of the USAPA Constitution." Doc. 1 at 11 (¶31).

current and former USAPA officers, *in their individual capacities*, claiming, *inter alia*, that their actions in deferring USAPA's dissolution and distribution of assets once it was decertified as the certified bargaining representative of the US Airways pilots and its continued expenditure of funds on seniority list integration proceedings constituted a breach of fiduciary in violation of Section 501(a) of the LMRDA. (See, e.g., Complaint, Doc. 1, at 4, ¶8)

On June 26, 2015, the Ninth Circuit Court of Appeals issued its opinion in the matter of *Addington v. USAPA*. Doc 54-1.

By letters dated June 29, 2015 and July 2, 2015, the USAPA Merger Committee permanently withdrew from the McCaskill-Bond seniority list integration proceedings. Docs. 56-1 and 62-1 (respectively).

By Procedural Award dated July 15, 2015, the Preliminary Arbitration Board, the arbitration panel established pursuant to the Protocol Agreement (and the panel that in January 2015 recommended to the APA that the West Pilots should be represented by its own merger committee), recommended that the APA use its best efforts to establish a merger committee to represent the interests of the "legacy U.S. Airways East pilots (East Merger Committee)". Doc. 62-2, at 2.

As of July 18, 2015, an East Pilots Merger Committee was established by the APA.

Discussion

These recent events have a significant impact on the motions presently pending before the Court: the motion by the USAPA defendants to dismiss the complaint (Doc. 22) and the *Bollmeier* plaintiffs' motion for temporary restraining order (Doc. 16), in particular the likelihood of success prong of the required showing for TRO. As argued in the context of those motions, the § 501 action fails as a matter of law because such actions can only be maintained

against an "officer, agent, shop steward, or representative of a **labor organization**." 29 U.S.C. § 501(a) (emphasis added) and only a member of that labor organization has standing to commence such an action[2] and USAPA ceased being a labor organization under the LMRDA as of the date of decertification, September 16, 201. See, e.g. Doc. 22-1, at 21-24 (memorandum of law in support of motion to vacate and dismiss); Doc. 24, at 17-19 (memorandum in opposition to motion for TRO). The *Bollmeier* defendants noted that this provision is narrowly construed in that, "[b]ecause § 501(b) extends the jurisdiction of federal courts, its requirements are to be narrowly construed 'so as not to reach beyond the limits intended by Congress.'" *Reed v. United Transp. Union*, 633 F.Supp. 1516, 1527 (W.D.N.C. 1986) (quoting *Phillips v. Osborne*, 403 F.2d 826, 828 (9th Cir. 1968), *reversed on other grounds*, 828 F.2d 1066 (4th Cir. 1987)). As the *Bollmeier* defendants argued, while the USAPA Merger Committee continued to be involved in the McCaskill-Bond SLI process after USAPA's decertification, that did not mean USAPA was a labor organization for purposes of the LMRDA, because USAPA ceased the activities that define a labor organization, that is, "dealing with . . . [US Airways or New American] concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment." 29 U.S.C. § 402(i). As of September 16, 2014, those responsibilities rested solely with the APA.

In response, the *Bollmeier* plaintiffs argued that the *Bollmeier* defendants took too narrow a view of the LMRDA, specifically relying on USAPA's involvement in the McCaskill-Bond

[2] The LMRDA defines a labor organization as an organization "**which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment**, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body." 29 U.S.C. § 402(i) (emphasis added).

SLI process as proof of its status as a labor organization, arguing that since seniority affects rates of pay and other terms and conditions of employment, involvement in seniority *is* dealing with an employer. (See, eg. Doc. 35, at 13-15)

However, as of June 29, 2015, the effective date of USAPA's permanent withdrawal from the McCaskill-Bond SLI process, there can no longer be any doubt that USAPA is not a labor organization under the LMRDA. USAPA is not a bargaining representative, and neither it nor any committee within it, deals with an employer concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment directly or indirectly as argued by the *Bollmeier* plaintiffs. To the extent participation in seniority list integration proceedings can be interpreted as a "term or condition of employment", the USAPA Merger Committee's withdrawal from the proceedings and its disbandment definitively cements USAPA's termination as a labor organization. *See Kanawha Valley Labor Council, AFL-CIO v. Am. Fed. of Labor and Congress of Indus. Orgs.*, 667 F.2d 436, 439 (4th Cir. 1981) (A labor council that did not deal "with employers over matters affecting the employees" was not a labor organization under the LMRDA.); *Donovan v. National Transient Div., Intern. Bhd. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers*, 542 F.Supp. 957 (D. Kan. 1982) (Where defendant NTD, a division of the International, deals directly with the employers and handle grievances, it is a labor organization under the LMRDA.), *order aff'd in part, rev'd in* part on other grounds, 736 F.2d 618 (10th Cir. 1984), *cert. denied* 469 U.S. 1107 (1985); *Brennan v. United Mine Workers of Am.*, 475 F.2d 1293, 1296 (Cir. D.C. 1973) (Union districts which organized nonunion mines, handled some grievances, and dealt directly with employers were subordinate "labor organizations" within the meaning of the LMRDA.); *Cross v. United Mine Workers of Am.*, 353 F.Supp. 504 (S.D. Ill. 1973) (Union district that has entered into collective

bargaining agreements with employers governing wages, rates of pay, hours and grievances, and whose officers have contract responsibilities in representing employees concerning wages, hours and working conditions is a labor organization under the LMRDA); *Monborne v. United Mine Workers of Am.*, 342 F.Supp. 718 (W.D.PA 1972) (District organizations which bear all the characteristics of a labor organization in that they settle labor disputes with employers concerning hours of work, conditions of employment, and other subjects are labor organizations within the definition of the LMRDA); *Williams v. International Typographical Union, AFL-CIO*, 423 F.2d 1295 (D.D.C. 1970) (Subdivision of local union that exists mainly to collect dues and keep earning records for the benefit of the local union is not a labor organization within the meaning of the LMRDA), *cert. denied* 400 U.S. 824 (1970).

Further reinforcing USAPA's permanent withdrawal from the McCaskill-Bond SLI process is the fact that as of in or about July 17, 2015, the APA, the certified bargaining representative of the legacy U.S. Airways pilots, established an APA East Merger Committee, just as it had established an APA West Merger Committee in January 2015.

It is without doubt that USAPA is not a labor organization as defined by the LMRDA. As such, the *Bollmeier* plaintiffs and the individual defendants are not members or officers, respectively, of a labor organization under the LMRDA, and the *Bollmeier* action must be dismissed as a matter of law. For the same reasons, there is no likelihood that the *Bollmeier* plaintiffs will succeed on the merits of their action, and their motion for a TRO or preliminary injunction should be denied as a matter of law.

Dated: July 27, 2015

Respectfully submitted,

TIN FULTON WALKER & OWEN

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **SUPPLEMENTAL EXHIBITS IN FURTHER SUPPORT OF USAPA DEFENDANTS' MOTION TO VACATE THE ORDER OF MARCH 5, 2015, OR, IN THE ALTERNATIVE, DISMISS THE *BOLLMEIER* VERIFIED COMPLAINT, AND IN FURTHER OPPOSITION TO THE *BOLLMEIER* PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION** with the Clerk of the Court using the CM/ECF system, and that notification pursuant to the CM/ECF system will be sent to:

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This the 27th day of July, 2015.

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