UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

U.S. AIRLINE PILOTS ASSOCIATION, by its President Michael Cleary,

Plaintiff,

-against-

US AIRWAYS, INC., and US AIRWAYS GROUP, INC.

Defendants.

----------X

Docket No. 11-CIV-2579 (ARR) (SMG)

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff U.S. AIRLINE PILOTS ASSOCIATION (hereinafter "USAPA"), by its President Michael Cleary, and by and through its attorneys, O'DWYER & BERNSTIEN, LLP, as and for its Amended Complaint, respectfully alleges as follows:

NATURE OF ACTION

1. USAPA brings this action against defendants US AIRWAYS, INC. (hereinafter "US Airways") and US AIRWAYS GROUP, INC. (hereinafter "US Airways Group") for declaratory and injunctive relief pursuant to 28 U.S.C. § 2201, the Declaratory Judgment Act, and 45 U.S.C. §§ 151-188, the Railway Labor Act (hereinafter "RLA").

2. As demonstrated *infra*, defendants, without justification and as a result of anti-union animus, have embarked upon a campaign of harassment, intimidation, and coercion of USAPA, its leadership, vocal supporters, and pilots for exercising their rights under the RLA to engage in speech and other lawful activities for their mutual aid and benefit, to improve working conditions, including the safe operation of aircrafts, and to demonstrate support for their labor organization. Among other improper actions, USAPA representatives and individual pilots have been, and continue to be, disciplined and threatened with discipline, for their efforts to improve working

conditions; address and ameliorate concerns relating to the safe operation of aircrafts; for exercising their operational judgment to ensure the airworthiness of aircraft and ultimately the safety of co-employees and passengers; and are being harassed and intimidated through the use of investigatory interviews about matters within the operational judgments of pilots, which were never previously the subjects of such actions.

3. Further demonstrating defendants' repudiation of the collective bargaining process is their failure to exert every reasonable effort to bargain over a new collective bargaining agreement and their violation of the status quo by abandoning well established and mutually agreed upon dispute resolution processes rendering these processes ineffectual.

4. To remedy defendants' multiple violations of the RLA, which cannot be redressed through contractual or administrative means, USAPA seeks injunctive and declaratory relief as described fully *infra*, including, but not limited to, an order compelling defendants to revert to the status quo rules and working conditions and comply with its legal obligations under the RLA**.**

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under the RLA, 45 U.S.C. §§ 151 *et seq.*, pursuant to 28 U.S.C. § 1331. This Court also has jurisdiction herein pursuant to 28 U.S.C. § 1337, as this is an action arising under a statute that regulates commerce and/or protects trade and commerce against restraints, namely, the RLA.

6. Plaintiff's claims are also brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and plaintiffs seek a declaration as to the parties' rights and obligations under the RLA. USAPA is entitled to such a declaration because the instant dispute is an actual and existing controversy.

7. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §

1391(b), because jurisdiction is not dependent on diversity of citizenship and it is a district where USAPA is doing business, and defendants reside in, are found in, or are doing business in this district. It is also the district in which US Airways operates numerous flights daily from JFK and LaGuardia airports.

PARTIES

8. USAPA is a private, unincorporated association operating as a labor organization. USAPA is a "representative" as defined by the RLA, 45 U.S.C. § 151 (Sixth), and is the certified collective bargaining representative of US Airways pilots. USAPA has its principal place of business located at 200 E. Woodlawn Road, Suite 250, Charlotte, North Carolina, 28217. By its officers and employees, USAPA conducts business and acts on behalf of its members in the Eastern District of New York. Michael Cleary is the President of USAPA and appears in his representative capacity.

9. US Airways is a commercial airline with national and international operations, and is a "common carrier by air" within the meaning of 45 U.S.C. § 181, and as such its labor relations is governed by the RLA, 45 U.S.C. §§ 151 *et seq*. US Airways has its principal place of business located at 111 West Rio Salado Parkway, Tempe, Arizona 85281.

10. Upon information and belief, US Airways is a wholly owned operating subsidiary of US Airways Group.

11. Upon information and belief, US Airways Group is an airline holding company with certain wholly owned operating subsidiaries, including, but not limited to, US Airways, and has its principal place of business located at 111 West Rio Salado Parkway, Tempe, Arizona 85281.

FACTUAL BACKGROUND

12. In May, 2005, US Airways and America West Airlines announced their intention to

merge and become a single airline known as US Airways.

13. At the time of the announcement, US Airways and America West Airlines were each parties to collective bargaining agreements ("CBAs") governing the terms and conditions of employment for their respective pilots.

14. In or about September, 2005, US Airways and American West Airlines completed their agreement to merge, and are now known as US Airways.

15. At the time of the merger and until April, 2008, both the US Airways pilots and the America West Airlines pilots were represented by the Airline Pilots Association ("ALPA").

16. The US Airways collective bargaining agreement (commonly and hereinafter referred to as the "East CBA") became effective on or about January 1, 1998, and amendable on or about December 31, 2009.

17. The America West Airlines collective bargaining agreement (commonly and hereinafter referred to as the "West CBA") became effective on or about January 1, 2004, and amendable on or about December 30, 2006.

18. As of March 31, 2011, there were approximately 3,892 active US Airways pilots – 2,551 pilots covered by the East CBA and 1,341 pilots covered by the West CBA.

19. On or about September 23, 2005, defendants and ALPA entered into a Letter of Agreement known as the Transition Agreement, which sets forth, *inter alia*, procedures governing the merger of US Airways and America West Airlines.

20. Under the terms of the Transition Agreement, although US Airways and America West Airlines merged to form a single carrier called US Airways, the pilot workforces of US Airways and America West Airlines remained separate and covered by the East CBA and West CBA, respectively, until a single integrated CBA is concluded.

21. In April, 2008, plaintiff replaced ALPA as the certified bargaining representative for the merged US Airways pilots.

22. As the certified, exclusive bargaining representative of the now merged US Airways pilots, USAPA became a party to the East CBA and West CBA, and, in or around June 2008, took over negotiations for a single integrated CBA, which negotiations continue to date.

FACTS

USAPA and Defendants are Engaged in a "Major" Dispute

23. The East CBA became effective on or about January 1, 1998, and was amendable on or about December 31, 2009.

24. The West CBA became effective on or about January 1, 2004, and was amendable on or about December 30, 2006.

25. On or about September 23, 2005, defendants and ALPA entered into a Letter of Agreement known as the Transition Agreement, which set forth, *inter alia*, procedures governing the merger of US Airways and America West Airlines.

26. Under the terms of the Transition Agreement, although US Airways and America West Airlines merged to form a single carrier called US Airways, the pilot workforces of US Airways and America West Airlines remain separate and covered by the East CBA and West CBA, respectively, until a single integrated CBA is reached.

27. The Transition Agreement served as the Section 6 notice of "intended change in agreements affecting rates of pay, rules or working conditions" pursuant to Section 6 of the RLA.

28. On September 23, 2005, within approximately sixty days after execution of the Transition Agreement, ALPA and defendants commenced direct negotiations.

29. All the terms and conditions on the East CBA and the West CBA were subjects of negotiations, including, but not limited, to the grievance and arbitration procedures set forth in Sections 19 to 21 of both CBAs.

30. In or around June 2006, with negotiations continuing, ALPA filed a Section 6 notice of intent to change or amend the West CBA, which became amendable on December 30, 2006.

31. From 2005 until April, 2008, defendants offered only one comprehensive proposal, commonly referred to as the "Kirby Proposal" which was first introduced in or around May 7, 2007.

32. In April, 2008, plaintiff replaced ALPA as the certified bargaining representative of the US Airways pilots, and, in or around June 2008, took over negotiations for a new CBA.

33. Direct negotiations with defendants continued until April, 2009.

34. Despite four years of bargaining, the parties made little or no progress on an integrated CBA, especially with respect to crucial issues such as pilot costs and scheduling, as defendants insisted upon draconian terms and ignored proposals for industry standard wages and conditions of employment.

35. In or around April, 2009, plaintiff proposed jointly applying to the National Mediation Board ("NMB") for mediation services pursuant to the RLA.

36. Defendants refused, and instead insisted upon costly private mediation.

37. Plaintiff objected to private mediation on the grounds it was a delaying tactic and unnecessary in light of the extensive "major" dispute resolution procedures available to the parties under the RLA. [1]

[1] See Western Airlines, Inc. v. International Brotherhood of Teamsters, 480 U.S. 1301, 1302, 107 S.Ct. 1515 (1987) ("'Major' disputes involve the formation of collective-bargaining agreements, and the resolution of such disputes is governed by § 6 of the [Railway Labor] Act, 45 U.S.C. §§ 156, 181."); Elgin, Joliet and Eastern Railway Company v.

38. However, because the Transition Agreement allowed either party to unilaterally bring the negotiations before a private mediator, plaintiff was required to participate in private mediation.

39. The parties participated in private mediation before Mediator Carol A. Wittenberg from April 2009 until December, 2009.

40. In or around October 2009, plaintiff filed a Section 6 notice of intent to change or amend the existing East CBA.

41. Private mediation proved fruitless, and in or around November 2009, plaintiff applied to the NMB for assistance with the ongoing contract negotiations. Defendants opposed plaintiff's application despite the NMB's unrivaled expertise in conciliating RLA disputes, and the fact that the previous attempts at direct negotiations and private mediation had been ineffectual in arriving at a new integrated CBA.

42. Over defendants' objections, plaintiff's application was granted, and since May 2010 to the present, the parties have been engaged in contentious monthly mediation sessions under the supervision of the NMB.

43. The parties' "major" dispute is ongoing, as the RLA's "major" dispute resolution procedures have not been exhausted.

Defendants' Breach of their Duty to Bargain in Good Faith

44. The RLA imposes a duty upon defendants to "exert every reasonable effort to make and maintain agreements." 45 U.S.C. § 152, First, which requirement applies to the bargaining for a single integrated CBA.

Burley, 325 U.S. 711,723, 65 S.Ct. 1281, 1289-90 (1945) (collective bargaining negotiations constitute a "major" dispute).

45. Defendants have violated their statutory duty to exert very reasonable effort to reach an agreement with respect to a single integrated CBA.

46. Despite the continued good faith efforts of plaintiff to reach an agreement with defendants over a single integrated CBA governing the terms and conditions of employment for all US Airways pilots, no such agreement has been reached, and no significant progress made.

47. Mediation has been contentious with very little agreement on terms and conditions of employment, and no agreement to date on major issues such as rates of pay, benefits, other pilot costs, retirement, and scheduling.

48. Upon information and belief, defendants are not bargaining with an intent to reach agreement and are prolonging and frustrating negotiations because the continuation of the terms of the existing East CBA and West CBA provide defendants with substantial monetary benefits and a competitive advantage over rival airlines, especially with respect to pilot costs. The East CBA and West CBA provide for wages, fringe benefits and retirement benefits that are substantially lower than standard industry wages, fringe benefits and retirement benefits paid to pilots in the commercial airline industry.

49. Upon information and belief, defendants have also not bargained, and are not bargaining with an intent to reach agreement and are prolonging and frustrating negotiations as part of their deliberate attempt to undermine support for USAPA among its membership, and to attempt to influence and coerce USAPA membership with respect to their choice of bargaining representatives.

50. Defendants' lack of good faith bargaining is evidenced by: (a) general hostility towards and contempt for the negotiation process; (b) understaffing the negotiation personnel; (c) delaying and frustrating bargaining by refusing to agree to additional negotiating sessions; (d)

refusing to respond to proposals made by plaintiff concerning contested major issues such as pay and vacation; (e) intentionally and continuing to make repeated unreasonable bargaining proposals while fully aware that said proposals would be rejected by plaintiff, and do not conform to existing industry standards; (f) unilaterally making changes to the grievance and arbitration processes despite pending negotiations on changes to those sections in the CBAs; and (g) embarking upon a campaign of harassment and intimidation of pilots for raising safety concerns and exercising their discretion to ensure the airworthiness of aircrafts and ultimately the safety of employees and passengers.

51. Defendants have failed to devote the staff or time necessary to fully engage in and commit to meaningful good faith negotiations or mediation.

52. Prior to the merger in 2005, US Airways' Labor Relations/Human Resources department consisted of at least six individuals, and during negotiations, as many as eight employees with responsibility for contract negotiations and resolving East pilot contractual disputes.

53. Prior to the merger, America West Airlines had its own labor management/human resources staff of four employees responsible for contract negotiations and grievance processing. In addition to the four full-time employees, America West Airlines would hire an outside consultant to assist during contract negotiations.

54. When US Airways and America West Airlines merged, US Airways, rather than combining the labor relations/human resources staff of both airlines, instead reduced its personnel to five individuals with responsibility for managing both the East CBA and West CBA. What was formerly a minimum combined staff of ten was reduced by half to five.

55. Defendants also require four of the five employees to participate in negotiations in addition to resolving contractual disputes.

56. In addition to understaffing the negotiation team, defendants refuse to commit more than three and a half days a month to mediation sessions, which is insufficient for any meaningful bargaining especially given that negotiations/bargaining has been ongoing for six years.

57. Further evidence of defendants' bad faith bargaining also includes their refusal to respond to reasonable bargaining proposals made by plaintiff. In response to plaintiff's proposals, defendants submit and resubmit proposals previously made by them containing terms they know to be untenable and contrary to established industry standards. With respect to major issues, defendants have hardly altered their proposals from the terms of the Kirby Proposal first introduced in May, 2007.

Defendants' Violation of their Duty to Maintain the Status Quo During the Instant "Major" Dispute

58. In executing the Transition Agreement, the parties acknowledged that there remained open and unresolved grievances at both US Airways and America West Airlines, and that resolution of outstanding and new grievances and disputes would be in the best interests of all parties. As such, the parties expressly agreed to use "to the maximum extent possible, expedited dispute resolution processes" to resolve all open grievances and disputes. Furthermore, US Airways agreed that they were willing to discuss the settlement of all outstanding grievances. (See Transition Agreement, Section VIII.F, annexed hereto as Exhibit "3")

59. The express procedures for investigations and discipline of pilots and the grievance and arbitration process are set forth in Sections 19 to 21 of both the East CBA and the West CBA. Both CBAs outline steps required to be taken before any disciplinary action can be taken against a pilot. (See East CBA, Sections 19 to 21, annexed hereto as Exhibit "1"; West CBA, Sections 19 to 21, annexed hereto as Exhibit "2")

60. In addition to the express grievance and arbitration procedures set forth in the East

CBA and West CBA, the parties have mutually agreed upon and implemented additional long-standing and well established dispute resolution practices and customs that have become so firmly established and customary as to become part of and integral to the grievance and arbitration process.

61. However, beginning in or around Spring 2007, and continuing to the present, defendants unilaterally and without justification abandoned the parties' express agreement to discuss settlement and use "to the maximum extent possible, expedited dispute resolution processes" to resolve outstanding and current grievances and disputes. As these dispute processes were an integral part of the grievance and arbitration process, defendants' abandonment of these processes constitutes a unilateral change in the actual objective working conditions and rules that has resulted in an abrogation of the grievance and arbitration process in its entirety.

Accelerated Arbitration Procedures

62. In an attempt to reduce the backlog of cases in the grievance and arbitration process, on August 11, 2002, US Airways and USAPA's predecessor ALPA, entered into a Letter of Agreement implementing Accelerated Arbitration procedures.[2]

63. The practice and custom was to employ these procedures to resolve all minor disputes where the material facts were not in dispute, instead of a drawn-out hearing with extensive testimony.

64. During two days of Accelerated Arbitration hearings, it was customary for the parties to resolve between 10 to 12 grievances.

65. Accelerated Arbitration procedures were routinely, consistently, and successfully utilized by US Airways and ALPA until approximately 2006, at which time US

[2] The Letter of Agreement No. 90 became effective on August 11, 2002, and became incorporated into the East CBA.

Airways unilaterally refused to employ these agreed upon procedures for any minor grievance, even if the grievance did not concern a vital issue and did not involve a factual dispute.

66. In 2008, ALPA, representing the East Pilots, attempted to invoke the Accelerated Arbitration procedures in an attempt to reduce the then existing 396 East pilot backlog of grievances. The parties got as far as selecting a neutral arbitrator to apply the procedures. However, no accelerated arbitration hearings took place as defendants refused to agree to schedule a date to commence the hearings.

67. Prior to 2007, the parties conducted, at a minimum, annual Accelerated Arbitration hearings. Since 2008, defendants have agreed to schedule only one Accelerated Arbitration hearing date with plaintiff. However, the earliest hearing date offered by defendants was in March, 2012.

Global Settlements

68. It has been the established practice and custom since January, 1998 in regards the East pilots, to enter into Global Settlements with respect to some minor wage, benefit, and work issues, as well as individual issues that are unique and unlikely to reoccur, particularly those that arose under prior collective bargaining provisions that have been altered since the grievance was originally filed.

69. Global Settlements effectively resolved unique disputes, called "one-off" situations (or one-of-a-kind scenarious). As these disputes were very unique and are or likely never to arise again because of changes to the East CBA, Global Settlements were crucial and necessary to the functioning of the grievance and arbitration process.

70. When employed, it was not uncommon to resolve between 15 to 20 grievances through Global Settlements.

71. However, since Spring 2007, defendants have unilaterally refused to enter into any

Global Settlements, despite that fact that many backlogged grievances are precisely the type of situations the Global Settlements were created by the parties to resolve, and did in fact resolve in the past.

72. Based upon past practice, it is likely that approximately one-half of all outstanding grievances are appropriate for resolution through Global Settlements or Accelerated Arbitration.

Last Chance Agreements

73. One of the most prominent and long-standing custom of the East dispute resolution practice was the entering into Last Chance Agreements with employees facing possible discharge for alleged misconduct. Last Chance Agreements were utilized to resolve some termination grievances by allowing the pilot to keep his job in exchange for waiving his right to avail himself of the contractual grievance and arbitration procedure should he be accused of a similar type of alleged misconduct in the future.

74. Last Chance Agreements had been utilized in nearly every termination grievance for the past 30 years, in regards to the East pilots, and were universally and mutually accepted and agreed as beneficial and essential to the effective operation of the East grievance and arbitration process.

75. Starting in June 2006, defendants began making unilateral changes to terms of the Last Chance Agreements. For instance, any Last Chance Agreements that were entered into were now qualified by defendants as both "non-precedential" and/or "non-referral". Additionally, defendants demanded that the pilot waive all due process rights concerning the determination of an alleged breach of the Last Chance Agreement, and defendants retained the sole authority to make such a determination. These changes deviated sharply from practice and custom.

76. From March 2003 to March 2008, defendants terminated 5 East pilots, and entered

into Last Chance Agreements with 4 of the terminated pilots, thus allowing the 4 pilots to retain their jobs.

77. From January 2003 to March 2008, there were 12 pilots terminated or at risk of termination. None of the terminations went to arbitration. Last Chance Agreements were entered into for 6 pilots allowing them to retain their jobs. Three of the 12 pilots retired prior to any hearing. One pilot's termination was settled with payment and benefits. Another pilot's termination was transitioned to disability with full benefits. The last pilot never proceeded with the grievance process.

78. Since 2008, defendants terminated the employment of 11 pilots, both East and West, for offenses similar to the ones for which Last Chance Agreements were historically entered into. Defendants have refused to enter into any form of a Last Chance Agreement in all but one of these terminations. To date, there has been only one arbitrator's decision rendered as to the 10 terminations, and plaintiff prevailed and the pilot was reinstated. However, for that pilot, the grievance/arbitration process took 17 months from his termination to receipt of the favorable decision.

79. Prior to 2008, similarly situated East pilots to those whose employment has recently been terminated were permitted to either enter into Last Chance Agreements or return to work with minor disciplinary suspensions for similar offenses.

Grievance and Mediation Program

80. In 2003, America West Airlines and ALPA entered into a Letter of Agreement ("LOA") mutually agreeing to a voluntary grievance mediation program as an alternative and efficient method of dispute resolution. The LOA remained in effect when plaintiff became the

certified bargaining representative, and it remains in effect until there is a new single integrated CBA.

81. Since 2008, defendants have unilaterally refused to attempt to resolve any outstanding grievances through the of Grievance Mediation despite several requests from plaintiff to do so.

82. Defendants' unilateral refusal to continue the above long-standing customs and well established practices has directly resulted in the current backlog of approximately 510 outstanding grievances and has rendered the parties' dispute resolution processes ineffectual.

83. Defendants' unilateral refusal to continue the above long-standing customs and well established practices is a violation of its duty to maintain the status quo.

84. Defendants' unilateral refusal to employ past practices to resolve grievances as well as their intentional dilatory conduct in scheduling and completing arbitrations have deterred pilots from filing grievances and rendered the grievance and arbitration process unavailing as a means of addressing disputes.

85. Upon information and belief, defendants have deliberately abandoned the use of the dispute resolution mechanisms described above to cause pilots to lose confidence in their bargaining representatives and to interfere with, influence, and coerce pilots in their choice of bargaining representatives.

86. Upon information and belief, defendants' unilateral refusal to employ past practices to resolve grievances as well as their intentional dilatory conduct in scheduling and completing arbitrations is tantamount to a repudiation of the collective bargaining agreements, and is therefore, a "major" dispute.

Defendants' Duty to "Exert Every Reasonable Effort"

87. Defendants' abandonment of the above expedited dispute resolution processes violates the RLA's mandate to "exert every reasonable effort . . . to settle all disputes . . . " 45 U.S.C. § 152, First.

88. Defendants, also in contravention of their duties under the RLA, have engaged in dilatory tactics as a means of undermining the grievance and arbitration process.

Defendants' Delay Tactics at Arbitration Hearings

89. Defendants' unjustified abrogation of the grievance and arbitration process is also a result of defendants intentionally and deliberately obstructing the scheduling and completion of arbitration hearings. Defendants' refusal to cooperate with plaintiff in good faith to schedule and complete arbitrations has directly resulted in inordinate delays in processing and resolving grievances, and is also a reason for the 510 grievance backlog.

90. Beginning in Spring 2007, and continuing to the present, defendants have refused to timely schedule disputes for resolution before an arbitrator despite repeated requests by USAPA to do so.

91. Defendants have intentionally refused to reasonably schedule arbitrations, even where defendants themselves have requested that a specific grievance be expedited .

92. Beginning in Spring 2007, and continuing to the present, defendants have failed to complete arbitration hearings within the agreed upon number of days, thereby requiring the parties to schedule multiple hearing days in order to complete a case. For instance, a 2008 arbitration that was originally scheduled to be heard in 2007 required 4 hearing dates to be completed. Another grievance, originally filed in August 2006 did not proceed to arbitration until June 2009 and even then required additional hearing days and was not completed until June 2010, 4 years after the grievance was originally filed. A pilot termination grievance required 4 days of hearing spanning 2

years and was not completed until February 2011. In all of these instances, it was defendants' dilatory conduct that required multiple hearing dates. Hearing dates scheduled months in advance would be cancelled at the minute by defendants. Defendants would not proceed on scheduling hearing days arguing that they were not prepared or that witnesses were unavailable. Prior to Spring 2007, it was only in the rarest of occasions that hearings would not be completed within the agreed amount of time. Now, hearings routinely require multiple hearing dates because of defendants.

93. To date, in 2011, the parties have completed 3 arbitrations and all 3 were hearings that commenced in 2009 and 2010.

94. In light of the significant backlog of cases, the need to schedule multiple hearing days to complete hearings has had the additional rollercoaster effect of forcing other grievances to be rescheduled at later dates, including into subsequent calendar years.

95. With the amount of continuation hearings increasing each year, and the amount of time allotted for arbitration hearings remaining constant, defendants' delay tactics have significantly increased the grievance backlog, and will continue to do so.

96. Beginning in Spring 2007, and continuing to the present, defendants have refused to comply with previous settlements between the parties, previous arbitration awards, and previous awarded grievances.[3]

97. This tactic requires USAPA to continue to grieve and arbitrate issues that have already been decided, thereby taking substantial time that could otherwise be devoted to resolving the approximately 510 outstanding grievances.

98. For instance, pursuant to Section 19 of the East CBA and confirmed and clarified in

[3] By this process, a US Airways Vice-President decides a grievance and issues an award with precedential effect that is supposed to govern in the event the same dispute arises again.

a May 31, 2007 Arbitrator's Opinion and Award, defendants are contractually obligated to provide written notice to a pilot before docking his pay. Defendants consistently disregard this binding and precedential award and dock pilots without notice, thereby requiring USAPA to grieve and arbitrate this issue in full, and deliberately wasting valuable time and resources that should be devoted to grievances concerning unresolved contractual or disciplinary disputes.

99. Beginning in Spring 2007 and continuing to the present, defendants have deliberately delayed in reaching a remedy on cases in which an arbitration has ruled against defendants as to liability.

100. This tactic requires the parties to meet and confer on numerous occasions, only to have to return to the arbitrator after defendants unjustifiably refuse to come to an agreement with USAPA over a proper remedy.

101. From 2006 and continuing to the present, defendants have refused to release pilots from their flight schedule in order to attend to union business, including, but not limited to, attendance at grievance and arbitration hearings.

102. From 2006 and continuing to the present, defendants have refused to provide transportation for USAPA members from their job location in order to attend to union business, including, but not limited to, attendance at grievance and arbitration hearings.

103. In or around May 2006, USAPA filed a grievance in response to defendants' refusals discussed above. USAPA continues to attempt to reach a resolution with defendants, but to no avail.

104. By employing the above described delay tactics in addition to their refusal to apply

long-standing customs and well established practices to resolve grievances, defendants have unilaterally altered and abrogated the contractual grievance and arbitration procedures in violation of the RLA.

Defendants' Retaliation Against Pilots for Expressing Support for the Union

105. Defendants have retaliated against, disciplined, and threatened to discipline USAPA representatives for engaging in speech and other lawful activities in support of USAPA and to improve pilots' working conditions, including the safe operation of aircraft.

106. Captain Tom Kubik is a US Airways pilot with over 30 years of experience as a US Airways pilot.

107. Since in or around 2009, Captain Kubik has been the USAPA Safety Committee Chairman.

108. In connection with his responsibilities as USAPA Safety Committee Chairman and in that capacity, in or about April and May 2011, Captain Kubik published information to USAPA pilots to inform them of various measures to improve their working conditions and advance the safe operation of aircraft.

109. Said communications responded, in part, to the results of a comprehensive Safety Culture Survey, which, *inter alia*, identified numerous areas of aircraft operation that were of concern to pilots due to the level of risk to safety involved.

110. Defendants refused to participate in the Safety Culture Survey.

111. One of the concerns identified in this survey was defendants' standard operating procedure (SOP) providing for single engine taxiing.

112. Another area of concern to the USAPA Safety Committee concerned defendants' SOP providing for the cabin doors to be closed as soon as possible**,** even if the aircraft is in hold status at the gate.

113. The USAPA Safety Committee communicated its opinions concerning these and other SOPs to pilots and proposed measures to ameliorate the risks posed by such SOPs to the safe operation of aircrafts.

114. As a direct result of the USAPA Safety Committee's expression of opinion and communications to USAPA membership concerning means of improving working conditions, by letter dated July 1, 2011, defendants threatened to discipline Captain Kubik, who had acted solely in his capacity as USAPA Safety Committee Chairman, including seeking, or threatening his termination from employment.

115. Upon information and belief, the threats made to Captain Kubik became known to the rank-and-file USAPA membership and have been, and continue to be, used by defendants as an object lesson to other pilots who engage in protected speech and other lawful activities for the mutual aid and benefit of pilots to improve their working conditions, by, *inter alia*, making aircraft operations safer.

116. Upon information and belief, defendants' actions against Captain Kubik have the effect, and are intended to have the effect, of influencing, coercing and interfering with US Airways pilots' choice of and support for their labor organization, and to undermine pilots' support thereof.

Attempts to Suppress Support for USAPA

117. For many years prior to July 2011, for various security related reasons, defendants' employees, including pilots, have been required to display various forms of identification.

118. For many years prior to July 2011, defendants have permitted their employees to wear a wide variety of lanyards, badge backers and other ID clips, including, but not limited to, those demonstrating support for a particular union or cause.

119. In or about April, 2011, USAPA distributed to its members lanyards that bear the legend "Safety First, I'm on board".

120. Although the "Safety First" lanyards did not mention USAPA or contain any union insignia, due to USAPA's well publicized efforts to improve safety and safe operation of aircrafts (the safety culture survey paid for by USAPA being an example), these lanyards are generally associated with USAPA and are a recognized expression of support for USAPA by its members and its organizational goals, including its safety program.

121. Upon information and belief, defendants understood and perceived the display of the "Safety First" lanyard as an expression of support for USAPA.

122. On or about July 11, 2011, defendants announced that commencing August 1, 2011, only company approved and uniform lanyards and other identification holders would be permitted.

123. Defendants cited lack of professionalism and possibility of divisiveness among the workforce because lanyards and ID holders were used to promote, *inter alia*, organizational agendas.

124. Defendants did not cite any basis for their stated concerns regarding the lanyards and other ID holders.

125. However, the long established practice and custom was that employees remained free to use whatever lanyard they chose.

126. Upon information and belief, the above-referenced policy has been instituted to prevent pilots and other US Airways employees from wearing the "Safety First" lanyards, to

censure expressions of support for USAPA, and to interfere with, influence, and coerce USAPA members and other US Airways employees from engaging in protected activity intended to improve conditions of employment by raising awareness with respect to safety issues.

Defendants' Use of "Investigatory Interviews" to Harass Pilots

127. Another respect in which defendants are interfering with pilots' statutory rights and violating the status quo is that pilots are being subjected to "investigatory interviews" with increasing frequency and with respect to matters that defendants have not previously required pilots to appear for in-person interviews for, all as part of a campaign of harassment and intimidation of pilots for supporting USAPA.

128. For many years prior to approximately October 2010, it was the agreed practice through long-standing precedent and conduct, that pilots would be subjected to investigatory interviews and required to report to Chief Pilots' offices only in limited circumstances, and infrequently, if ever, related to matters within the operational judgment of pilots, including matters affecting safety and the airworthiness of aircrafts.

129. Since in or about October, 2010 and continuing to the present, defendants have required pilots to attend investigatory interviews for matters relating to their operational decision-making, including pilots' judgments concerning safe taxiing speeds and for addressing equipment malfunctions (e.g. cockpit door closing mechanism, safety equipment, and oxygen pressure).

130. On or about July 6, 2011, defendants issued notices to 10 pilots requiring them to attend Chief Pilots' offices for investigatory interviews for alleged delayed/slowed taxiing, a matter of pilot discretion and judgment that has not previously been the basis for such interviews.

131. On or about July 15, 2011, defendants issued notices to 25 pilots who are being subjected to investigatory interviews with respect to similar operational decision-making.

132. Subjecting pilots to investigatory interviews on matters of pilot discretion such as taxiing and airworthiness of aircrafts violates the status quo.

133. Upon information and belief, this recent change in long established policy and practice relating to the use of investigatory interviews is part and parcel of defendants' campaign to punish and retaliate against pilots for supporting USAPA and its organizational goals and to influence, coerce and interfere with pilots' choice of and support for USAPA.

Suppression of Union Support – Unprecedented Discharges

134. A further manifestation of defendants' attack on USAPA and its members for supporting USAPA is defendants' unprecedented discharge of pilots.

135. In 2011, as in prior years, defendants required pilots to complete a distance learning program, which was supposed to be completed by May 31, 2011.

136. In 2011, as in prior years, pilots were unable to complete the program for a variety of scheduling and other reasons.

137. In a sharp departure from its usual and customary policies and practices, in or about June and July 2011, defendants discharged pilots for failing to complete the program.

138. In a sharp departure from its usual and customary policies and practices, defendants publicized these terminations in a communication to all US Airways pilots.

139. Upon information and belief, these terminations and the departure from the usual and customary policies and practices is intended by defendants to punish USAPA pilots for their support for USAPA and its organizational goals and in an attempt to undermine support for USAPA among its membership.

COUNT I

VIOLATIONS OF RLA SECTIONS 2, FIRST, THIRD, AND FOURTH

140. USAPA repeats and realleges the allegations in paragraphs 1-139, inclusive, as if set forth fully herein.

141. Section 2 of the Railway Labor Act ("RLA"), 45 U.S.C. § 152, prohibits an employer from taking any action intended to interfere with, influence or coerce employees in the exercise of their rights to, *inter alia*, organize, choose their representatives, and join or remain or not join or remain members of any union.

142. RLA Section 2, Third provides all covered employees with the right to designate representatives without interference, influence or coercion. 45 U.S.C. § 152, Third.

143. Section 2, Fourth of the RLA, in relevant part, guarantees covered employees "the right to organize and bargain collectively through representatives of their own choosing," and, moreover, prevents employers from: (a) "deny[ing] or in any way question[ing] the right of its employees to join, organize, or assist in organizing the labor organization of their choice," (b) "interfer[ing] in any way with the organization of its employees," or (c) "influenc[ing] or coerc[ing] employees in an effort to induce them to join or remain or not to join or remain members of any labor organization." 45 U.S.C. § 152, Fourth.

144. Claims alleging violations of Sections 2, Third and Fourth are within the jurisdiction of Federal District Courts, not the System Board of Adjustment. See Railway Labor Executives v. Boston and Maine Corp., 808 F.2d 150, 157 (1st Cir. 1986) ("[s]uch a controversy involves the substantive rights protected by the RLA and is within the competency of the district courts because these are claims that cannot be resolved by interpretation of the collective bargaining agreement").

145. Jurisdiction lies with the District Court, even where there is already a certified union representing the employees in question (frequently described as "post certification" scenarios), and the contract governing the terms of employment for said employees has a viable dispute resolution

procedure. See Fennessy v. Southwest Airlines, 91 F.3d 1359 (9th Cir. 1996); Clift v. United Parcel Service, Inc., 1990 WL 43936 (W.D.Ky. January 31, 1990); Conrad v. Delta Airlines, Inc., 494 F.2d 914 (7th Cir. 1974) (organizing of a new union is **not** the only type of activity protected by Section 2, Third and Fourth of the RLA.).

146. Judicial intervention is available in "post certification" scenarios where, as is here, "the employer's conduct has been motivated by anti-union animus or an attempt to interfere with its employees' choice of their collective bargaining representative or constitutes discrimination or coercion against that representative or involves acts of intimidation which cannot be remedied by administrative means." Independent Union of Flight Attendants v. Pan American World Airways, 789 F.2d 139, 141-42 (2d Cir. 1986) (internal quotations and citations omitted).

147. 28 U.S.C. § 2201 provides that, "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and the other legal relations of any interested party seeking such a declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

148. Plaintiff seeks appropriate declaratory and injunctive relief remedying defendants' violations of the RLA, including Sections 2 First, Third, and Fourth, by, *inter alia*, (a) repudiating the collective bargaining process by failing to exert every reasonable effort to bargain over an integrated contract and in the administration of the contract by abandoning long established dispute resolution procedures; (b) threatening USAPA representatives with termination for engaging in speech and other lawful activities to improve working conditions and safety; (c) requiring pilots to submit to investigatory interviews over operational judgments, an area previously within pilots' discretion; (d) adopting policies restricting pilots' right to wear and display union-associated

insignia and thereby express support for their union and its organizational goals; (e) terminating pilots for reasons that are unprecedented, all for the purpose of punishing USAPA members for supporting USAPA and to influence, coerce, and interfere with their rights to bargain collectively, join and assist the labor organization of their choosing, and; (f) abrogating and rendering ineffectual the grievance and arbitration process by abandoning the many established practices and procedures that permitted said process to operate, thereby undermining USAPA and influencing, coercing and interfering with pilots' statutory rights guaranteed by the RLA.

149. In light of all the above, plaintiff and its members are substantially and irreparably injured and aggrieved by defendants' unlawful acts. See Arcamuzi v. Continental, 819 F.2d 935, 938 (9th Cir. 1987) (holding that "more than economic harm is involved when an employer retaliates against protected activity. Damages and reinstatement would not remedy the coercive and inhibitory effects upon the employees' organizational rights secured by the RLA. Such harm is irreparable"). Moreover, notwithstanding the abrogation of the contractual dispute resolution procedure, resort to the Court is the only remedy available to vindicate the **statutory** rights of USAPA pilots under the RLA, including Sections 2, First, Third and Fourth. As such, declaratory and injunctive relief is proper and should be issued against defendants with respect to all the unlawful acts described herein.

COUNT II

FAILURE TO MAINTAIN THE STATUS QUO DURING THE ONGOING "MAJOR" DISPUTE

150. USAPA repeats and realleges the allegations in paragraphs 1-149, inclusive, as if set forth fully herein.

151. Pursuant to Section 2, Seventh of the RLA, carriers, such as defendants, are

prohibited from changing the rates of pay, rules, or working conditions of its employees, as embodied in CBAs, except in the manner proscribed by the collective bargaining agreements or pursuant to section 156 of the RLA. 45 U.S.C. § 152, Seventh.

152. In light of the negotiations for a single integrated CBA detailed above, the parties are engaged in an ongoing "major" dispute, and have been for approximately six years. See Elgin, Joliet and Eastern Railway Company v. Burley, 325 U.S. 711, 723, 65 S.Ct. 1282, 1289-90 (1945) (collective bargaining negotiations constitute a "major" dispute); Consolidated Rail Corporation v. Railway Labor Executives' Association ("Conrail"), 491 U.S. 299, 302, 109 S.Ct. 2477, 2480 (1989) ("Major disputes seek to create contractual rights, minor disputes to enforce them."); Air Cargo, Inc. v. Local Union 851, Int'l Brotherhood of Teamsters, 733 F.2d 241, 245 (2d Cir. 1984) ("'Major' disputes are those involving the formation of collective bargaining agreements or changes in the terms of existing agreements.").

153. Section 6 notices indicating "an intended change in agreements affecting rates of pay, rules, or working conditions" have been filed. 45 U.S.C. § 156.

154. While engaged in the "major" dispute, defendants had a duty to maintain the status quo and not unilaterally change any term of the current CBAs until the RLA's process for resolution of "major" disputes has been exhausted. 45 U.S.C. § 156; Conrail, 491 U.S. 299, 302-303, 109 S.Ct. 2477, 2480; Air Cargo, 733 F.2d at 245.

155. Federal District Courts have the power to enforce the duty to maintain the status quo and enjoin either party from engaging in conduct violative of that duty. Detroit & Toledo Shore Line R.R. v. United Transp. Union ("Shore Line"), 396 U.S. 142, 90 S.Ct. 294 (1969). The usual showing of irreparable harm for an injunction is not required to enforce the duty to maintain the

status quo under Section 6 of the RLA. Aircraft Mechanics Fraternal Ass'n v. Atlantic Coast Airlines, Inc., 55 F.3d 90, 92 (2d Cir. 1995 (citing Conrail, 491 U.S. at 303, 109 S.Ct. 2477, 2480).

156. 28 U.S.C. § 2201 provides that, "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and the other legal relations of any interested party seeking such a declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

157. Plaintiff seeks a declaratory judgment declaring that defendants have violated their duty to maintain the status quo during a "major" dispute by abandoning well established expedited dispute resolution processes. Employment of the expedited dispute resolution processes were mutually agreed to and acquiesced to by defendants. See Shore Line, 396 U.S. at 153, 90 S.Ct. 294, 301 ("actual working conditions" encompass not just the express terms of the agreement, but also past practices and customs that "ha[ve] occurred for a sufficient period of time with the knowledge and acquiescence of the employees to become in reality a part of the actual working conditions.") As these expedite dispute resolution processes were an integral, necessary, and essential part of the grievance and arbitration process, defendants' abandonment of these processes constitutes a change in the actual objective working conditions and rules that has resulted in an abrogation of the grievance and arbitration process in its entirety. See id., at 154, 90 S.Ct. 294, 301 (The RLA's "status quo" requirement is intended to preserve "those actual, objective working conditions and practices, broadly conceived, which were in effect prior to the time the pending dispute arose and which are involved in or related to that dispute.").

158. Defendants' unjustified and unilateral change in the actual objecting working conditions and rules has resulted in a current backlog of approximately 510 grievances.

159. Defendants' unilateral refusal to employ past practices to resolve grievances as well as their intentional dilatory conduct in scheduling and completing arbitrations have deterred pilots from filing grievances and rendered the grievance and arbitration process unavailing as a means of addressing disputes.

160. Defendants' wrongful conduct has also undermined pilots' confidence in plaintiff.

161. In addition to explicitly violating the RLA, defendants' conduct is in derogation of the policies and principles underlying the RLA, in that the "major" dispute resolution procedures were designed in order to avoid industrial strife and damage to interstate commerce. Defendants' unlawful acts have substantially increased the likelihood that major and/or minor accidents will occur, thereby potentially resulting in serious injury and/or death to employees and customers, and significantly damaging interstate commerce.

162. Plaintiff seeks an injunction enjoining defendants from continuing to violate the status quo by abandoning the expedited dispute resolution processes.

163. Plaintiff is aggrieved by the violations alleged herein, and will continue to be substantially and irreparably injured unless the Court issues declaratory and injunctive relief. Plaintiff has no prompt, adequate, and effective remedy at law and this action is the only means available to it for the protection of its rights.

COUNT III

FAILURE TO MAINTAIN THE STATUS QUO DURING THE ONGOING "MAJOR" DISPUTE

164. USAPA repeats and realleges the allegations in paragraphs 1-163, inclusive, as if set forth fully herein.

165. Assuming, *arguendo*, the parties were not engaged in negotiations under Section 6 of the RLA, defendants are still under a duty to maintain the status quo, as defendants' unilateral

abrogation of the grievance and arbitration process constitutes a change in the CBAs in effect between the parties without complying with the provisions of 45 U.S.C. § 156 pertaining to changes in the rates of pay, rules, and working conditions, in violation of Section 2, Seventh of the RLA, 45 U.S.C. § 152, Seventh. See Int'l Longshoremen's Association, Local 158 v. Toledo Lakefront Dock Co., 1977 WL 1809 (S.D. OH. Dec. 16, 1977) (employer's unilateral attempt to abrogate the contractual grievance procedures constitutes a "major" dispute subject to injunctive relief); International Brotherhood of Teamsters (Airline Division) v. Texas International Airlines, Inc., 717 F.2d 157, 160-61 (5th Cir. 1983) (the illegality of unilaterally amending or modifying the terms of a collective bargaining agreement during a "major" dispute is an "unquestioned principle."). Furthermore, defendants' abrogation has been undertaken in "bad faith" in order to undermine USAPA's bargaining power. A dispute is major where an employer's claim has no basis in the agreement and is therefore frivolous, obviously insubstantial, or made in bad faith. See Conrail, 491 U.S. at 310, 109 S.Ct. 2477, 2484).

166. While engaged in the "major" dispute, defendants had a duty to maintain the status quo and not unilaterally change any term of the current CBAs until the RLA's process for resolution of "major" disputes has been exhausted. 45 U.S.C. § 156; Conrail, 491 U.S. 299, 302-303, 109 S.Ct. 2477, 2480; Air Cargo, 733 F.2d at 245.

167. Defendants have violated their duty to maintain the status quo during a "major" dispute by abandoning well established expedited dispute resolution processes. As these dispute resolution processes were an integral, necessary, and essential part of the grievance and arbitration process, defendants' abandonment of these processes constitutes a change in the actual objective working conditions and rules that has resulted in an abrogation of the grievance and arbitration process in its entirety. See Shore Line, at 154, 90 S.Ct. 294, 301 (The RLA's "status quo"

requirement is intended to preserve "those actual, objective working conditions and practices, broadly conceived, which were in effect prior to the time the pending dipute arose and which are involved in or related to that dispute.").

168. Plaintiff seeks a declaratory judgment declaring that defendants have violated their duty to maintain the status quo during a "major" dispute by abandoning well established expedited dispute resolution processes.

169. Plaintiff seeks an injunction enjoining defendants from continuing to violate the status quo by abandoning the expedited dispute resolution processes.

170. Plaintiff is aggrieved by the violations alleged herein, and will continue to be substantially and irreparably injured unless the Court issues declaratory and injunctive relief . Plaintiff has no prompt, adequate, and effective remedy at law and this action is the only means available to it for the protection of its rights.

COUNT IV

FAILURE TO BARGAIN IN GOOD FAITH OVER A SINGLE INTEGRATED COLLECTIVE BARGAINING AGREEMENT

171. USAPA repeats and realleges the allegations in paragraphs 1-170, inclusive, as if set forth fully herein.

172. The parties are currently engaged in negotiations over a new CBA concerning rates of pay, rules and working conditions for the pilots employed by defendants.

173. Pursuant to the RLA, defendants are required to "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions . . . " 45 U.S.C. § 152, First.

174. The requirement to bargain in good faith is a legal obligation that is judicially

enforceable. Chicago and North Western Railway Co. v. United Transportation Union, 402 U.S. 570, 577, 91 S.Ct. 1731, 1735 (1971).

175. Federal District Courts have the power to issue injunctions to enforce a party's Section 2, First obligation to "exert every reasonable effort to make and maintain agreements". See Chicago and North Western Railway Co., 402 U.S. 570, 91 S.Ct. 1731; Air Cargo, 733 F.2d at 247-248.

176. As compared to the duty to bargain in good faith under the National Labor Relations Act, "Section 2 (First) [of the RLA] imposes a higher standard of negotiation efforts …" Japan Air Lines Co., Ltd. v. Int'l Ass'n of Machinists and Aerospace Workers, 389 F.Supp. 27, 34 (S.D.N.Y. 1975), aff'd, 538 F.2d 46 (2d Cir. 1976).

177. "Whether this standard has been met must be determined by the whole of the party's conduct at the bargaining table." Id., citing Kennedy v. Long Island Rail Road Co., 319 F.2d 366 (2d Cir. 1963), cert. denied, 375 U.S. 830, 84 S.Ct. 75 (1963); American Airlines, Inc. v. Air Line Pilots Ass'n, Int'l, 169 F.Supp. 777, 794 (S.D.N.Y. 1958) ("In order to show such lack of good faith it is necessary to establish facts from which it can be reasonably inferred that a party enters upon a course of bargaining and pursues it with the desire or intent not to enter into an agreement at all."); Railway Labor Executives' Ass'n v. Boston and Maine Corp., 664 F.Supp. 605, 615 (D.Me. 1987) ("[B]ad faith must usually be inferred from circumstantial evidence" (internal citations omitted)), abrogated on other grounds by NLRB v. Curtin Matheson Scientific, Inc., 494 U.S. 775, 110 S.Ct. 1542 (1990).

178. 28 U.S.C. § 2201 provides that, "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and the other legal relations of any interested party seeking such a declaration,

whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

179. Plaintiff seeks a declaratory judgment declaring that defendants must bargain in good faith to reach a single integrated CBA.

180. Defendants are obligated to bargain in good faith over a single CBA.

181. However, while going through the motions of bargaining, defendants have taken no good faith steps to reach a single integrated CBA. See Chicago & North Western Ry. Co., 402 U.S. at 578, 91 S.Ct. 1731, 1736 ("The strictest compliance with the formal procedures of the Act is meaningless if one party goes through the motions with 'a desire not to reach an agreement'" (internal citations omitted)); Japan Air Lines Co., Ltd. v. Int'l Ass'n of Machinists and Aerospace Workers, 389 F.Supp. 27, 34 (S.D.N.Y. 1975) (Whether a party violates their legal obligation to bargain in good faith depends on "whether the party … has merely gone through the motions of compliance with the [RLA's] . . . procedures without a desire to reach an agreement.").

182. Defendants' lack of good faith bargaining is evidenced by: (a) their general hostility towards and contempt for the negotiation process; (b) understaffing the negotiation personnel; (c) delaying and frustrating bargaining by refusing to agree to additional negotiating sessions; (d) refusing to respond to proposals made by plaintiff concerning contested major issues such as pay and vacation; (e) intentionally and continually to make repeated unreasonable bargaining proposals while fully aware that said proposals would be rejected by plaintiff, and do not conform to existing industry standards; (f) unilaterally making changes to the grievance and arbitration processes despite while in negotiations; and (g) embarking upon a campaign of harassment and intimidation of pilots for raising safety concerns and exercising their discretion to ensure the airworthiness of aircrafts and ultimately the safety of employees and passengers. See Association of Flight Attendants v.

Horizon Air Industries, Inc., 976 F.2d 541, 545 (9th Cir. 1992)(A party's unlawful intent not to reach an agreement can be demonstrated where the party was "[e]ngaged in the mere pretense of negotiation, [or] adopted evasive and dilatory tactics that revealed an intent to wait until the union acceded to its demands.") (internal quotations omitted).

183. By the misconduct described herein, defendants have violated their duty under the RLA to make every reasonable effort to reach an agreement with USAPA regarding a single integrated CBA.

184. Defendants' actions throughout the negotiating process evince a clear intent not to reach agreement with USAPA, and instead to simply delay and frustrate said process.

185. Defendants' bad faith in negotiating the single integrated CBA is further evidenced by the fact that reaching said agreement would result in the loss of the current advantage defendants have over their competitors due to the terms and conditions of the current CBAs as compared to industry standards.

186. Plaintiff seeks an injunction enjoining defendants from continuing their bad faith bargaining in violation of the RLA.

187. Plaintiff is aggrieved by the violations alleged herein, and will continue to be substantially and irreparably injured unless the Court issues declaratory and injunctive relief . Plaintiff has no prompt, adequate, and effective remedy at law and this action is the only means available to it for the protection of its rights

COUNT V

FAILURE TO EXERT EVERY REASONABLE EFFORT TO SETTLE ALL DISPUTES AND TO BARGAIN IN GOOD FAITH

188. USAPA repeats and realleges the allegations in paragraphs 1-187, inclusive, as if set forth fully herein.

189. Under Section 2, First of the RLA, defendants have a legal obligation to "exert every reasonable effort … to settle all disputes, whether arising out of the application of a collective bargaining agreement or otherwise." 45 U.S.C. § 152, First.

190. The requirement to bargain in good faith is a legal obligation that is judicially enforceable. Chicago and North Western Railway Co. v. United Transportation Union, 402 U.S. 570, 577, 91 S.Ct. 1731, 1735 (1971).

191. Federal District Courts have the power to issue injunctions to enforce a party's Section 2, First obligation to "exert every reasonable effort to make and maintain agreements." See Chicago and North Western Railway Co., 402 U.S. 570, 91 S.Ct. 1731; Air Cargo, 733 F.2d at 247-248.

192. As compared to the duty to bargain in good faith under the National Labor Relations Act, "Section 2 (First) [of the RLA] imposes a higher standard of negotiation efforts …" Japan Air Lines Co., Ltd. v. Int'l Ass'n of Machinists and Aerospace Workers, 389 F.Supp. 27, 34 (S.D.N.Y. 1975), aff'd, 538 F.2d 46 (2d Cir. 1976).

193. 28 U.S.C. § 2201 provides that, "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and the other legal relations of any interested party seeking such a declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

194. Plaintiff seeks a declaratory judgment declaring that defendants must bargain in good faith and "exert all reasonable effort . . . to settle all disputes."

195. Plaintiff also seek a declaratory judgment declaring that defendants must restore the

grievance and arbitration process, including employment of the expedited dispute resolution procedures to resolve grievances and disputes, as previously practiced between the parties.

196. Pursuant to the RLA, defendants are legally required to "exert every reasonable effort to … settle all disputes … arising out of the application" of an existing CBA. 45 U.S.C. § 152, First.

197. Defendants are also required to consider and decide all disputes between it and its employees "with all expedition" in conference with the designated representative of its employees. 45 U.S.C. § 152, Second.

198. By the misconduct described herein, namely, defendants' abandonment of the aforementioned expedited dispute resolution process which constitute a change in the actual objective working conditions and rules resulting in an abrogation of the grievance and arbitration process in its entirety, defendants have violated their legal duty under the RLA to make "every reasonable effort" to settle or otherwise resolve disputes concerning the application of the current collective bargaining agreements.

199. USAPA has sought to settle and resolve contractual disputes arising under the existing East and West CBAs, but has been unsuccessful in light of defendants' frustration and abrogation of the contractual dispute resolution procedures, and failure to abide by established past practices and long-standing customs regarding the resolution of grievances and disciplinary disputes.

200. Defendants' bad faith failure to resolve these contractual disputes is exacerbated by the fact that many of the backlogged disputes concern vital safety issues. As such, defendants' violation of their duties under the RLA has resulted in the increased possibility that employees and the general public are exposed to a serious risk of injury or death.

201. Defendants' violation of the RLA has resulted in a backlog of approximately 510 grievances.

202. Plaintiff is aggrieved by the violations alleged herein, and will continue to be substantially and irreparably injured unless the Court issues declaratory and injunctive relief . Plaintiff has no prompt, adequate, and effective remedy at law and this action is the only means available to it for the protection of its rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment against defendants and respectfully requests the Court, as appropriate:

I. As to Count I:

(A) Issue injunctive relief enjoining defendants from violating the RLA, from engaging in acts that are intended to and have the effect of influencing, coercing, and interfering with, or attempting to do so, pilots' rights to join, assist and express support for USAPA; and

(B) Issue a declaratory judgment that the acts complained of above under Count I are violative of RLA Section 2, Third and Fourth, and must be enjoined pursuant to paragraph I(A) above; and

II. As to Count II:

(A) Issue injunctive relief enjoining defendants from unilaterally abrogating and altering the relevant collective bargaining agreements pending completion of the RLA's "major" dispute resolution procedures, and enjoining defendants from continuing to violate the status quo by abandoning the expedited dispute resolution processes.; and

(B) Issue a declaratory judgment that defendants have violated their duty to maintain the status quo during a "major" dispute by abandoning well established expedited dispute resolution processes; and

III. As to Count III:

(A) Issue injunctive relief enjoining defendants from unilaterally abrogating and altering the relevant collective bargaining agreements pending completion of the RLA's "major" dispute resolution procedures, and enjoining defendants from continuing to violate the status quo by abandoning the expedited dispute resolution processes.; and

(B) Issue a declaratory judgment that defendants have violated their duty to maintain the status quo during a "major" dispute by abandoning well established expedited dispute resolution processes; and

IV. As to Count IV:

(A) Issue a declaratory judgment declaring that defendants' actions during negotiations for a single integrated collective bargaining agreement constitute a failure to "exert every reasonable effort" to reach an agreement in violation of Section 2 (First), 45 U.S.C. § 152 (First); and

(B) Issue an order requiring defendants to cease and desist engaging in such unlawful conduct; and

(C) Issue injunctive relief restraining and enjoining defendants from refusing to "exert every reasonable effort" to reach an agreement going forward; and

V. As to Count V:

(A) Issue a declaratory judgment declaring that defendants' frustration and abrogation of the contractual grievance and arbitration procedure violates their duty under Section 2, Second of the RLA, 45 U.S.C. § 152, Second, to "exert every reasonable effort" to settle or otherwise resolve disputes arising out of the application of the existing collective bargaining agreements; and

(B) Issue an order compelling defendants to:

(1) comply with the contractual dispute resolution procedure and all practices and customs derived thereof;

(2) convene with USAPA on an expedited basis to settle, resolve, hear and/or decide all grievances and disputes involving the application or interpretation of the existing collective bargaining agreements; and

(3) comply fully with its legal obligations under Section 2, First and Second; and

VI. As to Counts I through V:

(A) Award USAPA its reasonable costs and attorneys fees associated with this proceeding; and

(B) Grant such other and further relief as the Court deems equitable and just.

Dated: July 18, 2011
New York, New York

Yours, etc.,

O'DWYER & BERNSTIEN, LLP

By: s/ Gary Silverman
GARY SILVERMAN (GS 9287)
Attorneys for Plaintiff
52 Duane Street, 5th Fl.
New York, New York 10007
(212) 571-7100