IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

US AIRLINE PILOTS ASSOCIATION,

Plaintiff,

v.

US AIRWAYS, INC.; AMERICAN AIRLINES, INC.; and ALLIED PILOTS ASSOCIATION,

Defendants.

Case No. 1:14-cv-00328 (BAH)

MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

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STATUTES

US Airways, Inc. ("US Airways") and American Airlines, Inc. ("American"), collectively, "the Company," respectfully move this Court to compel plaintiff US Airline Pilots Association ("USAPA") to arbitrate the parties' dispute over the interpretation of their Memorandum Of Understanding Regarding Contingent Collective Bargaining Agreement ("MOU"), and to stay this lawsuit pending the result of that arbitration, in accordance with the requirements of the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 *et seq*., Paragraph 20 of the parties' MOU, and applicable case law.

INTRODUCTION

The parties in this case have a dispute regarding the procedure to be used for the integration of pilot seniority lists following the 2013 merger involving US Airways and American. The Company and co-defendant Allied Pilots Association ("APA"), the union which represents the pilots employed by pre-merger American, contend that, pursuant to the express terms of the McCaskill-Bond Amendment to the Federal Aviation Act as well as Section 13(b) of the *Allegheny-Mohawk* Labor Protective Provisions ("LPPs") incorporated by McCaskill-Bond, the pilot seniority integration is governed by Paragraph 10 of the MOU. Under Paragraph 10(a) of the MOU, the integrated seniority list shall be determined by final and binding arbitration before a three-arbitrator panel to be designated by the parties, with the arbitration hearing to occur after finalization of a Joint Collective Bargaining Agreement ("JCBA"), which has not yet occurred. On the other hand, plaintiff USAPA, the union which represents the pilots employed by pre-merger US Airways, contends that the procedures agreed upon in Paragraph 10 of the

MOU are null and void because the parties did not separately execute a "Protocol Agreement" pursuant to Paragraph 10(f) of the MOU. And because the Paragraph 10 contractual procedures are null and avoid, USAPA asserts, McCaskill-Bond dictates that the US Airways/American pilot seniority integration shall be conducted in accordance with the procedures in Section 13(a) of the *Allegheny-Mohawk* LPPs. Under those procedures, the integrated seniority list would be determined by arbitration before a single arbitrator on an expedited basis rather than by a panel of three MOU arbitrators after the JCBA has been finalized.

The resolution of the claims in this case will therefore require interpretation and application of the MOU – including whether the parties intended that the MOU Paragraph 10 procedures, including Paragraph 10(a), would become null and void in the event a Paragraph 10(f) "Protocol Agreement" were not signed. If the Company and APA are correct that MOU Paragraph 10 remains in place, it would necessarily follow that the alternative procedure invoked by USAPA would not be applicable. On the other hand, if USAPA is correct that some or all of the MOU Paragraph 10 procedures are null and void, it would necessarily follow that some or all of the alternative procedures invoked by USAPA would be applicable. The statutory claim under McCaskill-Bond raised by USAPA, therefore, cannot be decided without first resolving the underlying contract-interpretation issue of whether the parties intended for MOU Paragraph 10, including Paragraph 10(a), to remain in place. And pursuant to the provisions of the RLA, this underlying contract-interpretation issue is for the "mandatory, exclusive" jurisdiction of the arbitral board of adjustment established pursuant to Paragraph 20 of

the MOU, and not for this Court. *Bhd. of Locomotive Eng'rs v. Louisville & Nashville R.R.*, 373 U.S. 33, 38 (1963); *Oakey v. US Airways Pilots Disability Income Plan*, 723 F.3d 227, 229-30 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 1513 (2014). The text of the RLA, decades of Supreme Court case law, and the terms of the MOU itself all recognize this clear rule.

The Company thus respectfully requests that this Court compel arbitration of the parties' dispute regarding the meaning of MOU Paragraph 10 – an arbitration which the Company has previously requested and which USAPA has persistently refused. While the arbitration is pending, "the appropriate procedure is for the court to suspend its own proceedings until the end of the arbitral process or until it is clear that arbitration cannot be obtained." *Air Line Pilots Ass'n v. Northwest Airlines, Inc.*, 627 F.2d 272, 278 (D.C. Cir. 1980); *see also Tice v. Am. Airlines, Inc.*, 288 F.3d 313, 318 (7th Cir. 2002) ("[The] suit must be stayed until the dispute over the agreement is resolved by the only body authorized to resolve such disputes, namely an arbitral panel.").

FACTUAL BACKGROUND

A. The MOU Signed By The Parties Governs Pilot Seniority Integration After The US Airways/American Merger.

In anticipation of a merger involving US Airways and American, all four parties to this case – US Airways, American, USAPA, and APA – entered into the MOU, a collective bargaining agreement that would govern the terms and conditions of post-merger employment for all pilots, both those who had worked for US Airways prior to

the merger and those who had worked for American. Dkt. 26-3 (MOU).[1] As relevant here, MOU Paragraph 10 sets out the framework the parties agreed on to integrate the seniority lists of the US Airways pilots and the American pilots (the MOU "Seniority-Integration Process").

Paragraph 10(a) of the MOU Seniority-Integration Process requires the designation of a three-arbitrator panel and provides for a specific arbitration hearing schedule:

> If, on the date ninety (90) days following the Effective Date [of the merger], direct negotiations have failed to result in a merged seniority list acceptable to the pilots at both airlines, a panel of three neutral arbitrators will be designated within fifteen (15) days to resolve the dispute, pursuant to the authority and requirements of McCaskill-Bond. That arbitration proceeding will commence no later than 60 days after the designation of the arbitrators . . . , provided that it is understood that, in no event, shall the seniority integration arbitration proceeding commence prior to final approval of the [Joint Collective Bargaining Agreement] . . . .

MOU ¶ 10(a). The MOU also imposes certain procedural requirements on the arbitration process; for instance, it requires the Company to remain neutral regarding the relative ordering of pilots on the integrated seniority list. MOU ¶ 10(d). The MOU, as well, requires that the arbitration decision comply with specific substantive requirements, *see* MOU ¶ 10(b), and provides that the award shall be final and binding on all parties, MOU ¶¶ 2, 10(c).

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[1] To avoid burdening this Court with duplicative documents, the Company cites to the declaration and exhibits filed by APA in connection with its Motion to Compel Arbitration and Stay Proceedings (Dkt. 26). The MOU is on file as Docket No. 26-3 (Declaration of Captain Mark Stephens ("Stephens Decl.") Ex. 1).

B. The US Airways/American Seniority-Integration Process.

The US Airways/American merger closed on December 9, 2013, and the MOU became effective on that day. Dkt. 26-2 (Stephens Decl.) ¶ 4. The first procedural step contemplated by the MOU Seniority-Integration Process was for the parties to negotiate a Seniority Integration Protocol Agreement to "set forth the process and protocol for conducting negotiations and arbitration, if applicable." *See* MOU ¶ 10(f) ("A Seniority Integration Protocol Agreement ('Protocol Agreement') consistent with McCaskill-Bond and this Paragraph 10 will be agreed upon within 30 days of the Effective Date."). Although there was agreement on virtually all issues for the Protocol Agreement – including on a procedure for the selection of a three-arbitrator panel pursuant to MOU Paragraph 10(a) – the parties were unable to finalize the agreement due to a disagreement over USAPA's role in the seniority-integration process if and when USAPA were decertified by the National Mediation Board ("NMB"). Dkt. 26-2 (Stephens Decl.) ¶ 35.[2]

USAPA and APA did not reach a negotiated agreement on an integrated seniority list within 90 days of the closing of the US Airways/American merger. Dkt. 26-2 (Stephens Decl.) ¶ 36. In this circumstance, MOU Paragraph 10(a), as quoted above, provides that a panel of three arbitrators will be designated by the parties to resolve the seniority-integration dispute. *See* MOU Paragraph 10(a).

[2] After the merger, a single union will represent all pilots. Given the vastly greater number of pre-merger American pilots relative to pre-merger US Airways pilots, that union will, in all likelihood, be APA. Pursuant to MOU Paragraphs 10(a) and 27, the seniority-integration arbitration hearing will not commence until a single labor organization is certified by the NMB. Under the more expedited timeframe of the *Allegheny-Mohawk* LPPs, however, the seniority-integration arbitration might commence before USAPA is decertified.

Pursuant to MOU Paragraph 10(a), the Company made a proposal to APA and USAPA regarding the manner in which the three arbitrators would be selected. Dkt. 26-2 (Stephens Decl.) ¶ 38. APA indicated that it was willing to accept the Company's proposal or, alternatively, that it was willing to accept the arbitrator-selection proposal to which all parties – including USAPA – had agreed in the negotiations for the Protocol Agreement. *Id.* ¶ 39. The Company responded to APA's proposal, indicating that either proposal for selecting arbitrators was acceptable to the Company. *Id.* ¶ 40. USAPA never responded to either proposal. *Id.* ¶ 41.

C. USAPA Files A Lawsuit.

Rather than responding to either of the arbitrator-selection proposals under Paragraph 10(a) of the MOU, USAPA instead filed a request with the NMB on February 20, 2014 for a panel of seven potential arbitrators from which, according to USAPA, one arbitrator should be selected pursuant to Section 13(a) of the *Allegheny-Mohawk* LPPs. Dkt. 26-14 (Stephens Decl. Ex. 12). USAPA then filed the instant lawsuit seeking a declaratory judgment that it need not comply with the MOU's seniority-integration procedures, in particular the provisions in MOU Paragraph 10(a) governing the composition and designation of the seniority-integration arbitration panel and the timeline for the arbitration hearing. Dkt. 1.

USAPA's Complaint alleges that because there is no Protocol Agreement in place to govern the selection of the three-arbitrator panel for seniority integration,[3] the

[3] The lack of an agreed procedure for the selection of arbitrators is, of course, largely a product of USAPA's own making, since it refused to respond to either of the proposals made by

McCaskill-Bond statute mandates that the US Airways/American seniority integration shall be governed by the schedule and procedures in Section 13(a) of the *Allegheny-Mohawk* LPPs. *See* Pub. L. 110–161, Div. K, tit. I, § 117, 121 Stat. 2382 (Dec. 26, 2007), codified at 49 U.S.C. § 42112, note. Section 13(a) of the *Allegheny-Mohawk* LPPs contemplates a single arbitrator and a more compressed arbitration schedule than the schedule agreed to by the parties in MOU Paragraph 10(a).

The Company filed its Answer and Counterclaims on March 21, 2014 (Dkt. 13), as did defendant APA (Dkt. 12). The defendants contend that the parties' failure to finalize a Protocol Agreement pursuant to MOU Paragraph 10(f) does not void the MOU's seniority-integration provisions in MOU Paragraph 10 (including those in Paragraph 10(a)). Rather, defendants contend that the MOU's seniority-integration provisions are controlling because the McCaskill-Bond statute, by its own terms, does not mandate resort to the *Allegheny-Mohawk* LPPs if there is a collective bargaining agreement (like the MOU) in place which allows for the protections afforded by Sections 3 and 13 of the *Allegheny-Mohawk* LPPs. *See* 49 U.S.C. § 42112, note § 117(a)(2). Moreover, even if McCaskill-Bond required resort to the *Allegheny-Mohawk* LPPs, which it does not, the MOU's seniority-integration provisions would still be controlling because *Allegheny-Mohawk* Section 13(b) expressly permits the parties to agree to an alternative method for dispute settlement in lieu of Section 13(a) – which the parties have done in Paragraph 10 of the MOU.

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the Company and APA for selecting arbitrators pursuant to MOU Paragraph10(a) – including a proposal to which it had agreed during the parties' negotiations for the Protocol Agreement pursuant to MOU Paragraph 10(f). Dkt. 26-2 (Stephens Decl.) ¶¶ 38-41.

D. The Dispute Over The Meaning Of MOU Paragraph 10.

In the course of preparing the Joint Report of Parties Under L.R. 16.3(D) (Dkt. 25, "Joint Rule 16 Report"), it became clear that the central dispute in this case turns on the interpretation of the MOU, specifically, whether the parties to the MOU intended that the seniority-integration provisions in MOU Paragraph 10, including the arbitrator-selection and arbitration schedule provisions in Paragraph 10(a), would become null and void if a Protocol Agreement were not executed by the applicable deadline. In the Joint Rule 16 Report, USAPA explicitly acknowledged that there likely are contract-interpretation disputes between the parties that are material to the resolution of this case. As just one example, USAPA stated that it "anticipates that lead counsel for each Defendant will be a deposed witness in this case since each was involved in negotiating *the contractual provisions at issue in this litigation*." Dkt. 25 at 16 (emphasis added). Thus, rather than denying the existence of a dispute over the meaning of the MOU, USAPA is arguing that this Court has jurisdiction to interpret the MOU. In its section of the Joint Rule 16 Report, USAPA expressly declares that "[t]o the extent the parties' MOU will be subject to interpretation, the agreement will be interpreted under the statutory provisions of the McCaskill-Bond Amendment." Dkt. 25, at 3.

In order to resolve the parties' dispute regarding the proper interpretation of MOU Paragraph 10, the Company filed a grievance pursuant to MOU Paragraph 20, submitting issues for the Board of Adjustment's decision, including the following:

> (c) Whether, as a contractual matter, the parties' failure to execute a Seniority Integration Protocol Agreement, referenced in MOU Paragraph 10(f), renders ineffective any of the other provisions of

> MOU Paragraph 10, specifically including the arbitrator-selection and hearing-schedule provisions in MOU Paragraph 10(a)?
>
> (d) Whether, as a contractual matter, the parties' failure to select arbitrators, pursuant to either the arbitrator-selection provision in MOU Paragraph 10(a) or through a Seniority Integration Protocol Agreement under MOU Paragraph 10(f), renders ineffective any of the other provisions of MOU Paragraph 10, specifically including the hearing-schedule provisions in MOU Paragraph 10(a)?

Dkt. 26-21 (Stephens Decl. Ex. 19) at 2. This grievance is referred to as "MTA Dispute #5." *Id*. at 1. The RLA mandates that grievances over the interpretation and application of collective bargaining agreements, like the MOU, must be resolved by final and binding arbitration before an adjustment board established by the parties. 45 U.S.C. § 184. Consistent with the RLA's mandate, the MOU provides that "any dispute over the interpretation or application of this [MOU] . . . shall be arbitrated on an expedited basis directly before a specially-created one-person System Board of Adjustment consisting of arbitrator Richard Bloch or Ira Jaffe, whoever shall be available to hear the dispute earliest." MOU ¶ 20 ("Paragraph 20 Arbitration").

Arbitration pursuant to MOU Paragraph 20 is an entirely different process from the seniority-integration arbitration contemplated by MOU Paragraph 10. The latter is a proceeding before a three-member panel designated by the parties to create an integrated seniority list for all pilots involved with the merger, while the former is a proceeding before a single arbitrator designated in MOU Paragraph 20 to resolve disputes regarding the proper interpretation of an existing collective bargaining agreement, here the MOU. *See* MOU ¶¶ 10, 20. Pursuant to the parties' agreement, Paragraph 20 Arbitration is expedited and generally contemplates the scheduling of a hearing within 30 days of

service of the submission and a decision by the arbitrator within 30 days after the first day of hearing. MOU ¶ 20.

In accordance with the provisions of MOU Paragraph 20, the Company submitted MTA Dispute #5 and requested hearing dates from the two arbitrators agreed on by the parties, Mr. Bloch and Mr. Jaffe. Dkt. 26-22 (Stephens Decl. Ex. 20), at 3. But USAPA flatly refused to participate in arbitration of these disputes. Rather than select any of the dates offered by the arbitrators, USAPA sent letters to both arbitrators declaring that it is "unwilling to submit any of the issues identified by the Company or APA to the System Board," based on its position that "the issues raised by the captioned grievance, including its arbitrability, are to be adjudicated by the Court." *Id*. at 4, 5. USAPA thus "decline[d] to appear and arbitrate this matter." *Id*.

Although USAPA refused to even discuss potential hearing dates, the Company reserved the earliest block of dates Mr. Bloch had available (June 17-19, 2014), so that an arbitration can be conducted promptly if the Court grants the Company's motion to compel. Dkt. 26-22 (Stephens Decl. Ex. 20), at 6, 7.[4]

ARGUMENT

I. THE COURT SHOULD COMPEL ARBITRATION

A. The RLA Mandates Arbitration Of "Minor Disputes."

Unlike labor disputes in other industries, where arbitration is a matter of contract between the parties, Congress determined that all disputes involving interpretation or

[4] Pursuant to Local Rule 7(m), the parties conferred regarding this motion, but were unable to reach agreement. A summary of the parties' discussions regarding this issue is set out in the Joint Rule 16 Report, Dkt. 25. As explained therein, USAPA opposes this motion. *Id*.

application of a collective bargaining agreement in the railroad and airline industries shall be subject to final and binding arbitration. 45 U.S.C. § 184. The RLA thus requires airlines and the unions representing their employees to establish arbitration panels, known as boards of adjustment, to resolve disputes involving the interpretation or application of collective bargaining agreements. 45 U.S.C. §§ 153, 184. These issues of interpretation or application of bargaining agreements are known as "minor" disputes. *Bhd. of Locomotive Eng'rs*, 373 U.S. at 36 n.3.[5]

The boards of adjustment "have exclusive jurisdiction to resolve disputes over the application of collective bargaining agreements in the railroad and airline industries." *Tice v. Am. Airlines, Inc.*, 288 F.3d 313, 314 (7th Cir. 2002); *Air Line Pilots Ass'n, Int'l v. Northwest Airlines, Inc.*, 627 F.2d 272, 275 (D.C. Cir. 1980) ("*ALPA v. Northwest Airlines*") ("[I]t is undisputed and indisputable that the Railway Labor Act, which has been extended in this respect to the airline industry, requires the contractual controversy between [the union and the airline] to be submitted to an arbitration board."). As the Supreme Court has repeatedly held, the jurisdiction of the relevant adjustment board over minor disputes is "mandatory, exclusive and comprehensive." *E.g.*, *Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320, 322-24 (1972); *Pennsylvania R.R. v. Day*,

[5] "Minor" disputes are so termed to distinguish them from "major" disputes. As the Supreme Court has explained, "[m]ajor disputes relate to the formation of collective [bargaining] agreements or efforts to secure them. The second class of disputes, known as 'minor' disputes, grow out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. Minor disputes involve controversies over the meaning of an existing collective bargaining agreement in a particular fact situation. Thus, major disputes seek to create contractual rights, minor disputes to enforce them." *Hawaiian Airlines v. Norris*, 512 U.S. 246, 252-53 (1994) (citations and quotation marks omitted).

360 U.S. 548, 551-54 (1959). The RLA's language in this regard is "unequivocal," *Bhd. of R.R. Trainmen v. Chi. River & Ind. R.R. Co.*, 353 U.S. 30, 34 (1957), and neither a carrier nor a union may "defeat this right [i.e., the right to have a minor dispute decided by an adjustment board] by resorting to some other forum." *Bhd. of Locomotive Eng'rs*, 373 U.S. at 38.

B. The Interpretation Of The MOU Is A "Minor Dispute" Under The RLA.

USAPA has never disputed that this case requires interpretation of the MOU. Nor can it, in light of how it described its claim in the Joint Rule 16 Report. Indeed, USAPA believes the interpretation of the MOU is so central to its case that it seeks to depose the lead attorneys for each defendant because these attorneys were "involved in negotiating the contractual provisions at issue in this litigation." Dkt. 25 at 16. While USAPA does not deny the existence of the parties' dispute over the meaning of the MOU, it does assert that this contract-interpretation dispute should be resolved in federal court rather than before an arbitrator selected by the parties, and required by the RLA, simply because its Complaint nominally states a claim under a federal statute (i.e., McCaskill-Bond).

USAPA's position is incorrect. Decades of unequivocal Supreme Court case law establish that interpretation of the terms of a collective bargaining agreement, like the MOU, is a "minor" dispute within the meaning of the RLA. *Hawaiian Airlines*, 512 U.S. at 256 ("minor disputes [are] those involving the interpretation or application of existing labor agreements"); *Pittsburgh & Lake Erie Ry. v. Ry. Labor Executives' Ass'n*, 491 U.S. 490, 496 n.4 (1989) ("[m]inor disputes are those involving the interpretation or

application of existing contracts"); *Trainmen*, 353 U.S. at 33 (minor disputes are "controversies over the meaning of an existing collective bargaining agreement"). And, as demonstrated above, all "minor" disputes are subject to compulsory and exclusive arbitration under the RLA. *E.g.*, *Andrews*, 406 U.S. at 322-24.

C. This Court Should Compel Arbitration.

Federal courts have the authority and duty to compel arbitration over minor disputes. *Ass'n of Flight Attendants v. United Airlines, Inc.*, 71 F.3d 915, 917 (D.C. Cir. 1995) (compelling arbitration over dispute regarding interpretation and application of labor contract term). It makes no difference that USAPA filed its Complaint nominally invoking only the federal McCaskill-Bond statute. *E.g.*, *Trainmen*, 353 U.S. at 34 ("The right of one party to place the disputed issue before the Adjustment Board, with or without the consent of the other, has been firmly established."); *ALPA v. Northwest Airlines*, 627 F.2d at 275 ("The arbitral board's jurisdiction is exclusive and cannot be avoided by efforts to bring the dispute directly into court."). In *Oakey v. US Airways Pilots Disability Income Plan*, 723 F.3d 227, 229-30 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 1513 (2014), for example, the plaintiff filed a complaint in federal court alleging a violation of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*, but the D.C. Circuit held that the RLA "vests in the 'applicable adjustment board' exclusive jurisdiction over [plaintiff's] claim because it is grounded in the application and interpretation of a collective bargaining agreement." *See also ALPA v. Northwest Airlines*, 627 F.2d at 275. Similarly, in *Tice v. American Airlines, Inc.*, the plaintiffs sought relief under the federal Age Discrimination in Employment Act

("ADEA") and argued that their claims did not depend on the interpretation of the collective bargaining agreement and required only application of federal law. The Seventh Circuit rejected this argument, however, holding that arbitration was mandatory because the statutory claim turned on the meaning of an implicit term of the collective bargaining agreement. 288 F.3d at 316.

The only exception is in cases where Congress has "clearly expressed" an intent to override the provisions of the RLA. *Brown v. Ill. Cent. R.R.*, 254 F.3d 654, 663 (7th Cir. 2001); *see also ALPA v. Northwest Airlines*, 627 F.2d at 276. But the text of McCaskill-Bond reflects no intent to modify the RLA's requirement of mandatory arbitration for "minor disputes" over the interpretation of collective bargaining agreements – indeed, the language of McCaskill-Bond does not mention or address minor disputes at all. 49 U.S.C. § 42112, note § 117. Rather, it prescribes certain procedures applicable to the seniority "integration of covered employees" of air carriers that are subject to the RLA, but, even in doing that, McCaskill-Bond ensures the enforceability of the parties' collectively-bargained alternate arrangements. 49 U.S.C. § 42112, note § 117(a). It does not address, let alone govern, how to interpret MOU Paragraph 10. Moreover, the statute's legislative history reveals no intent to modify the RLA's mandatory arbitration provisions; rather, "McCaskill-Bond 'was enacted in December 2007 as a last-minute amendment to an unrelated budget bill, and was never considered in committee,'" and thus has almost "no meaningful legislative history." *Addington v. US Airline Pilots Ass'n*, CV-13-00471-PHX-ROS, 2014 WL 321349, at *10 (D. Ariz. Jan. 10, 2014) (citations omitted). Accordingly, there is no basis in the statutory text, legislative history,

or the case law to conclude that Congress intended McCaskill-Bond to trump the RLA's framework for resolving minor disputes. *Cf. ALPA v. Northwest Airlines*, 627 F.2d at 275 (ERISA does not supplant RLA's mandatory arbitration provisions); *Brown*, 254 F.3d at 663 (Americans with Disabilities Act does not supplant RLA's arbitration requirements); *Tice*, 288 F.3d at 314 (ADEA does not supplant RLA's mandatory arbitration provisions).

Based on the foregoing authorities, this Court should issue an order compelling arbitration pursuant to the procedures set out in Paragraph 20 of the MOU – so that the parties' dispute regarding the interpretation and application of MOU Paragraph 10 can be resolved by the only tribunal with the authority to do so.

II. THIS COURT SHOULD STAY THIS LAWSUIT PENDING THE RESULTS OF THE ARBITRATION

This case should be stayed pending the results of the expedited arbitration.[6] The arbitration of the contract-interpretation issues here will likely resolve all, or substantially all, of the claims in this case. If the arbitrator determines that the provisions of MOU Paragraph 10, including the provisions in Paragraph 10(a) regarding the hearing schedule for the seniority-integration arbitration and the selection of a three-arbitrator panel, are no longer in effect because the parties did not execute a Protocol Agreement under MOU Paragraph 10(f), then USAPA would likely have a basis for summary judgment on its

[6] The traditional equity factors considered in granting preliminary injunctive relief, such as the likelihood of success on the merits, are not evaluated in the context of a minor-dispute injunction case. *See, e.g., Local Lodge No. 1266 v. Panoramic Corp.*, 668 F.3d 276, 284-85 (7th Cir. 1981) (to evaluate likelihood of success on the merits of the arbitration would require court to delve into merits of underlying dispute, which would constitute an unwarranted infringement on the jurisdiction of the arbitrator).

claim that the seniority-integration arbitration should be conducted pursuant to Section 13(a) of the *Allegheny-Mohawk* LPPs. If, on the other hand, the arbitrator were to resolve the issue against USAPA and conclude that the parties to the MOU intended the provisions of Paragraph 10 to remain in effect regardless of whether the parties executed a Protocol Agreement under Paragraph 10(f), then the Company would likely have a basis for summary judgment in its favor.

In these circumstances, the D.C. Circuit has held that "the appropriate procedure is for the court to suspend its own proceedings until the end of the arbitral process or until it is clear that arbitration cannot be obtained." *ALPA v. Northwest Airlines*, 627 F.2d at 278; *see also Tice*, 288 F.3d at 318 ("[T]he suit must be stayed until the dispute over the agreement is resolved by the only body authorized to resolve such disputes, namely an arbitral panel."); *Miller v. Am. Airlines, Inc.*, 03 C 7756, 2004 WL 2203425, at *4 (N.D. Ill. Sept. 29, 2004) ("[M]andatory arbitration provision of the RLA strips this Court of subject matter jurisdiction and 'precludes' plaintiffs from proceeding" in federal court until after resolution of the arbitration.).[7] As the D.C. Circuit explained in *ALPA v. Northwest Airlines*, "[i]t is wise to await the completion of the arbitration process because the primary focus of the complaint though it does present independent statutory claims is on the alleged violation [that requires interpretation of the collective bargaining

[7] Indeed, many cases dismiss outright any claims nominally arising under a federal statute that turn on the interpretation of a collective bargaining agreement. In *Oakey*, for instance, the D.C. Circuit affirmed dismissal for lack of subject-matter jurisdiction because the ERISA claim there at issue required interpretation of a collective bargaining agreement. 723 F.3d at 238; *see also, e.g., Brown*, 254 F.3d at 668 (federal courts lack subject-matter jurisdiction to adjudicate complaints stating federal claims when resolution of those claims depends upon the interpretation of a collective bargaining agreement).

agreement], and arbitration, if had, may either resolve the entire controversy or at least aid in the solution by the court of the statutory contentions." 627 F.2d at 275.

The rationale for this rule can also be explained by drawing an analogy to the doctrine of primary jurisdiction:

> When, in a suit based on a federal statute, a potentially dispositive issue arises that is within the exclusive jurisdiction of an administrative agency, the suit must be stayed while the parties resort to the agency for that resolution. . . . [Similarly, this case must be stayed because] only the arbitral boards convened under the aegis of the Railway Labor Act have the authority to determine the rights conferred by a collective bargaining agreement in the airline industry.

Tice, 288 F.3d at 318. So too, here. Once the arbitration process under MOU Paragraph 20 is completed, the Court will be in a position to rule on the parties' dispositive motions – which will be substantially assisted, if not resolved outright, by the arbitrator's decision. A stay of proceedings in this case pending the result of arbitration is thus both efficient and required by clear D.C. Circuit precedent.

CONCLUSION

For all the reasons stated above, the Company respectfully moves this Court to compel arbitration of the parties' dispute over the interpretation of the MOU and to stay these proceedings pending the result of that arbitration.

Dated: May 2, 2014

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