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)

DEFENDANTS US AIRWAYS, INC.'S AND AMERICAN AIRLINES, INC.'S REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

INTRODUCTION

The Company, USAPA and APA agreed, in Paragraph 10 of their Memorandum Of Understanding Regarding Contingent Collective Bargaining Agreement (the "MOU"), to conduct a seniority-integration arbitration before a panel of three arbitrators, with the arbitration hearing to take place after finalization of a Joint Collective Bargaining Agreement, which has not yet occurred. The parties stated in the MOU that this arrangement would be in accordance with the applicable federal law, the McCaskill-Bond Amendment ("McCaskill-Bond"), in recognition of the fact that McCaskill-Bond expressly allows the parties to implement the terms of a collective bargaining agreement providing neutral arbitration protections similar to those in Section 13(a) of the *Allegheny-Mohawk* Labor Protective Provisions ("*Allegheny-Mohawk*," or the "*Allegheny-Mohawk* LPPs"), and also allows the parties to implement mutually-agreed alternative arrangements to the ones provided in Section 13(a) of the *Allegheny-Mohawk* LPPs.

But now USAPA contends that Paragraph 10 of the MOU somehow does not fully satisfy the requirements of McCaskill-Bond and thus that paragraph of the parties' negotiated agreement is effectively null and void in its entirety – meaning, in USAPA's view, that the seniority-integration process must be governed by Section 13(a) of the *Allegheny-Mohawk* LPPs, which prescribes a different process than the one agreed to by the parties in the MOU. Under *Allegheny-Mohawk* Section 13(a), the seniority-integration arbitration is to occur before a single arbitrator on an expedited basis. While

USAPA characterizes its contention as raising only statutory issues under McCaskill-Bond, its argument reflects an unavoidable point made in the Company's motion to compel arbitration: adjudication of the alleged statutory issues is not possible without first resolving the parties' contractual disputes regarding the meaning and application of MOU Paragraph 10. And, according to the Railway Labor Act (the "RLA"), 45 U.S.C. §§ 151 *et seq*., and a long line of well-settled case precedents, those contractual disputes can only be resolved by the arbitral board of adjustment established by Paragraph 20 of the MOU.

As but one example, USAPA's principal contention is that MOU Paragraph 10 is insufficient under McCaskill-Bond because it does not specify the identity of the three arbitrators who will serve on the seniority-integration arbitration panel, and thus does not provide the protections afforded by Section 13(a) of the *Allegheny-Mohawk* LPPs. In making this argument, USAPA claims that the parties agreed that the identity of the arbitrators would be specified in a Seniority Integration Protocol Agreement pursuant to the provisions of Paragraph 10(f) of the MOU. Because the parties have not signed a Protocol Agreement identifying the three arbitrators (due to disagreement over an issue unrelated to the selection of arbitrators), USAPA claims that the MOU provisions do not provide for neutral arbitration protections as required by McCaskill-Bond and thus are not enforceable.

But this alleged statutory claim indisputably presents a dispute about the meaning and application of the MOU. The Company (and the APA) do not agree with USAPA's contention that the MOU requires the arbitration panel to be identified in a

Paragraph 10(f) Protocol Agreement. To the contrary, Paragraph 10(f) does not even mention arbitrator selection. That subject is addressed separately in Paragraph 10(a), which requires the parties to designate the three arbitrators during a period of time after the deadline for reaching a Protocol Agreement under Paragraph 10(f). And pursuant to Paragraph 10(a), both the Company and the APA have made proposals to USAPA regarding selection of the seniority-integration arbitration panel, but USAPA has refused to respond or otherwise engage in the Paragraph 10(a) process. USAPA's refusal to comply with Paragraph 10(a) is one of the subjects of the contractual grievance filed by the Company and APA, which USAPA has refused to arbitrate.

Under the RLA, it is an arbitrator (and only an arbitrator) who must determine whether, as USAPA contends, the parties intended that the specific provisions regarding a three-arbitrator panel set forth in MOU Paragraph 10(a) were to become a complete nullity in the absence of a Protocol Agreement, or if, as APA and the Company contend, USAPA could not make its contractual commitments disappear simply by refusing to agree on a process for selecting the three arbitrators. Before USAPA's statutory claim under McCaskill-Bond can be adjudicated by the Court, contract-interpretation issues such as these must be resolved by the board of adjustment. Accordingly, arbitration should be compelled and the case should be stayed pending the arbitration.

ARGUMENT

I. THE PARTIES' DISPUTES REGARDING THE INTERPRETATION AND APPLICATION OF MOU PARAGRAPH 10 MUST BE RESOLVED BY THE APPROPRIATE ADJUSTMENT BOARD BEFORE THE COURT CAN ADJUDICATE USAPA'S CLAIM UNDER THE MCCASKILL-BOND STATUTE

USAPA seeks a declaratory judgment from this Court that the MOU Paragraph 10 provisions the parties agreed to (including the provisions in Paragraph 10(a) for a three-arbitrator panel and a seniority-integration arbitration hearing that occurs after a Joint Collective Bargaining Agreement has been reached) are not controlling in the instant post-merger seniority-integration process, and that instead the *Allegheny-Mohawk* Section 13(a) provisions for selection of a single arbitrator from a list of seven potential arbitrators provided by the National Mediation Board ("NMB") and an expedited arbitration hearing are controlling. According to USAPA, its entitlement to this declaratory judgment does not turn on the resolution of any contested issues regarding the meaning of the MOU, but instead is based solely on how this Court decides two issues of statutory interpretation, namely, whether MOU Paragraph 10 "allow[s] for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions" within the meaning of Section 117(a)(2) of McCaskill-Bond, 49 U.S.C. § 42112, Note 117(a)(2), and whether MOU Paragraph 10 contains an "alternative method for dispute settlement" and/or an "alternative procedure for selection of an arbitrator" within the meaning of Section 13(b) of the *Allegheny-Mohawk* LPPs (as incorporated by McCaskill-Bond).

USAPA's position is demonstrably incorrect. Indeed, its own arguments as to why it claims the MOU fails to satisfy McCaskill-Bond Section 117(a)(2) and *Allegheny-*

Mohawk Section 13(b) depend directly and substantially on USAPA's interpretations of the MOU – interpretations that are disputed by both the Company and APA. Accordingly, USAPA's claim based on the McCaskill-Bond statute cannot be adjudicated without resolution of the disputed contract-interpretation issues – issues which, under well-settled RLA case law, are for the exclusive arbitral jurisdiction of the board of adjustment established pursuant to Paragraph 20 of the MOU, and not for this Court.

A. USAPA's Section 117(a)(2) Argument Is Dependent On Disputed Issues Of Interpretation And Application Of The MOU.

McCaskill-Bond Section 117(a)(2) specifies that the seniority-integration provisions of a previously-negotiated collective bargaining agreement ("CBA") "shall not be affected" by McCaskill-Bond's default requirement that seniority integration be conducted pursuant to *Allegheny-Mohawk* Sections 3 and 13 so long as the CBA provisions at issue "allow for the protections afforded by sections 3 and 13." In arguing that the MOU fails to provide the Company's pilots with the "protections afforded by sections 3 and 13" of *Allegheny-Mohawk*, USAPA asserts that MOU Paragraph 10 is insufficient because it "did not establish a method of arbitrator selection, but only provided that three arbitrators would be selected." (Opp. at 16.) This assertion, however, is based on a contested issue of contract interpretation: USAPA claims that arbitrator selection was to occur only by means of a MOU Paragraph 10(f) Seniority Integration Protocol Agreement (which was never signed by the parties due to disagreement over issues unrelated to arbitrator selection), while the Company (and the APA) contend that arbitrator selection was also to occur through the process described in MOU

Paragraph 10(a), and that a Paragraph 10(f) Protocol Agreement was not to be a necessary prerequisite for selection of the three-arbitrator panel. Pursuant to the MOU Paragraph 10(a) process, the Defendants have proposed two different methods of arbitrator selection (including the method USAPA previously agreed to during negotiations for the Protocol Agreement) but USAPA has refused to respond, which Defendants contend is a violation of USAPA's obligations under Paragraph 10(a). This disputed contract-interpretation issue, including USAPA's alleged contract violation, has been presented in the Company's pending grievance (MTA Dispute #5) – a grievance which USAPA has refused to arbitrate.[1]

USAPA also argues that the phrase in MOU Paragraph 10(a) indicating that the seniority-integration process will be "consistent with McCaskill-Bond," and the reference in Paragraph 10(e) to the "obligations imposed by McCaskill-Bond," somehow suggest that the parties to the MOU did not intend for the express terms of MOU Paragraph 10 to be enforceable pursuant to Section 117(a)(2), but instead had a nowhere-expressed intention that the seniority-integration process would be controlled by *Allegheny-Mohawk* and only by *Allegheny-Mohawk*. (Opp. at 16.) But both the Company and the APA disagree with USAPA's interpretation of the cited language from the MOU. The

[1] While the arbitrator and not this Court must decide the disputed contract-interpretation question, we note that MOU Paragraph 10(f) makes no mention of arbitrator selection, contrary to the assertion by USAPA in the Joint Status Report that "Paragraph 10(f) stated that after the merger closing date, the airlines and the pilots' representatives would negotiate a seniority integration protocol agreement for negotiation of the seniority list integration and the selection of arbitrators . . . ." (Dkt. No. 20 at 7-8.) MOU Paragraph 10(a), on the other hand, expressly requires the parties to "designate[]" a three-arbitrator panel, and to do so during a time frame that is after the deadline for reaching the Paragraph 10(f) Protocol Agreement.

Defendants contend that the cited language merely reflects the unremarkable principle that McCaskill-Bond is applicable to the seniority-integration dispute among the Company's pilots and that, as Section 117(a)(2) itself specifies, the provisions of MOU Paragraph 10 would remain in effect and "not be affected" by McCaskill-Bond because those provisions of the MOU "allow for the protections afforded by sections 3 and 13" of *Allegheny-Mohawk*.[2] Under this interpretation, other requirements derived from the McCaskill-Bond statute were to remain in place, to the extent not inconsistent with MOU Paragraph 10, and those statutory obligations would be enforceable in court as referenced in MOU Paragraph 10(f).

In the above circumstances, the Court could not adjudicate USAPA's Section 117(a)(2) contentions without first resolving disputed contract-interpretation issues over which it has no jurisdiction. This, accordingly, warrants an order compelling arbitration of the contract-interpretation issues and staying the proceedings in this Court pending the results of that arbitration. *See Air Line Pilots Ass'n v. Northwest Airlines, Inc.*, 627 F.2d 272, 278 (D.C. Cir. 1980) (while the arbitration of contract-interpretation issues 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"); *Tice v. Am. Airlines, Inc.*, 288 F.3d 313, 316 (7th Cir. 2002) (where statutory claim turned on the meaning of an implicit term of the CBA, arbitration of the

[2] Thus, the Company is not seeking to invoke an "exception" to the application of McCaskill-Bond to the US Airways/American pilot seniority integration. It is seeking to invoke an "exception," ***contained in the text of McCaskill-Bond itself***, to the requirement that the seniority-integration process be governed by *Allegheny-Mohawk* Sections 3 and 13.

contract-interpretation issue was mandatory); *Miller v. Am. Airlines, Inc.*, 03 C 7756, 2004 WL 2203425, at *4 (N.D. Ill. Sept. 29, 2004); *cf. United Transp. Union v. Foxx*, --- F.3d ----, 2014 WL 1814044, at *3 (9th Cir. May 8, 2014) (Federal Railroad Administration did not have authority to adjudicate union's claim that railroad had violated federal Hours of Service Laws where "[t]he underlying issue is . . . what the Collective Bargaining Agreement requires in the absence of an agreement by the parties" on a particular subject).[3]

B. USAPA's Allegheny-Mohawk Section 13(b) Argument Is, Likewise, Dependent On Disputed Issues Of Interpretation And Application Of The MOU.

If, and to the extent, MOU Paragraph 10 does not satisfy the requirements of Section 117(a)(2), then McCaskill-Bond provides that the seniority-integration proceedings shall be governed by Sections 3 and 13 of the *Allegheny-Mohawk* LPPs. As noted above, Section 13(a) of the *Allegheny-Mohawk* LPPs provides for an expedited arbitration hearing at the request of any party. However, *Allegheny-Mohawk* Section 13(b) authorizes the parties to utilize a mutually-agreed "alternative method for dispute settlement or an alternative procedure for selection of an arbitrator" relative to

[3] USAPA also argues that MOU Paragraph 10 fails to satisfy the requirements of Section 117(a)(2) because the MOU does not specifically "identify the parties to the seniority integration dispute" (Opp. at 16), and instead uses more general phrases such as "merger representatives." But Sections 3 and 13 of the *Allegheny-Mohawk* LLPs do not specifically identify the parties to the dispute either. And here, the specific identity of the parties to the seniority-integration proceeding among the Company's pilots has in fact already been decided by a federal district court. *See* Order at 20-21, *Addington v. USAPA*, No. 2:13 cv 471 (D. Ariz. Jan. 10, 2014), Dkt No. 298 (filed in instant docket at Dkt. No. 26-13) (hereinafter "*Addington* Order"), *appeal pending* ("the process contemplated by McCaskill-Bond allows only the certified bargaining representatives to participate in seniority integration proceedings," which currently means the APA and USAPA, but not the West Pilots).

that contained in Section 13(a), and the parties here – including USAPA – agreed in MOU Paragraph 10(a) to just such an "alternative" arrangement, a three-arbitrator panel and a seniority-integration arbitration hearing that occurs after a Joint Collective Bargaining Agreement has been reached. USAPA now claims that those contract terms were rendered meaningless by its refusal to agree to a method for selecting the arbitrators. In doing so, it recycles many of its arguments under Section 117(a)(2), but with no better effect.

USAPA contends that the MOU does not constitute an "alternative procedure for selection of an arbitrator," but, as demonstrated in Section I.A above, that argument cannot be adjudicated until an arbitrator first resolves the parties' contract-interpretation dispute regarding the application of MOU Paragraphs 10(a) and 10(f) as it pertains to the selection of arbitrator(s).

USAPA also asserts that MOU Paragraph 10 does not satisfy the requirements for an "alternative method for dispute settlement" because, according to USAPA, the "alternative method for dispute settlement" must be something other than arbitration. (Opp. at 17.) USAPA cites no authority for its position, a position which is contrary to the plain meaning of Section 13(b). The MOU does in fact provide an "alternative method" relative to the *Allegheny-Mohawk* Section 13(a) process – in particular, it provides for a three-arbitrator panel, and it provides for a seniority-integration arbitration hearing only after the parties have reached a Joint Collective Bargaining Agreement, both of which are materially different methods for dispute settlement than those set forth in Section 13(a). If there were no difference, USAPA would not have filed this lawsuit.

USAPA argues, further, that MOU Paragraph 10 is not a sufficient alternative under Section 13(b), because Section 13(b) only applies if "the parties" have reached agreement on an alternative arrangement and "the MOU did not settle the question of the identity of the parties to the seniority dispute." (Opp. at 17.) But this argument ignores that, as noted above, a federal district court has already determined the identity of the parties to the seniority-integration proceeding involving the Company's pilots and all of those parties are signatories to the MOU. *See* note 3, *supra*. Given that ruling, and contrary to USAPA's argument, there are no unresolved questions regarding the identity of the parties to the seniority-integration dispute.

USAPA's more generalized argument under *Allegheny-Mohawk* Section 13(b) is that MOU Paragraph 10(f) reflects the parties' "deliberate choice" that Paragraph 10 was a mere "agreement to agree," and that in the absence of a Protocol Agreement, the MOU Paragraph 10 provisions were to be treated as null and void – with the contrary provisions of *Allegheny-Mohawk* Section 13(a) to be controlling instead.[4] The Defendants, on the other hand, contend that the parties intended Paragraph 10, including Paragraph 10(a), to be controlling whether or not a Paragraph 10(f) Protocol Agreement was reached. In support of its argument, USAPA refers repeatedly to its view of the intent and understanding of the parties when they negotiated Paragraph 10 of the MOU, and even

[4] Contrary to its current argument, USAPA contended in the *Addington* litigation that Paragraph 10 is more than a mere agreement to agree, stating that "the [seniority integration process is] a collectively bargained process set forth in the MOU that is consistent with McCaskill-Bond. It is a contractual seniority integration process." USAPA Controverting Statement of Facts, at ¶ 12, *Addington v. USAPA*, No. 2:13 cv 471 (D. Ariz. Nov. 13, 2013), Dkt. No. 269.

seeks discovery regarding that negotiation process. (Opp. at 3-4, 8, 17.) USAPA's argument is thus plainly based directly on a disputed interpretation of the MOU – which is a minor dispute under the RLA for the exclusive jurisdiction of the MOU Paragraph 20 board of adjustment.

II. USAPA'S RELIANCE ON THE PROCEEDINGS IN *ADDINGTON* IS MISPLACED

A. The Application Of McCaskill-Bond Section 117(a)(2) To The Issues Raised By USAPA's Current Lawsuit Was Not Decided In *Addington*.

USAPA's statement that the Court in *Addington* "***held*** that Paragraph 10 of the MOU did not constitute an agreement within Section 117(a)(2)'s exception" is both incorrect and misleading. (Opp. at 11 (emphasis added).) In *Addington*, unlike here, there was no attempt to override the specific provisions of MOU Paragraph 10 with contrary provisions of the *Allegheny-Mohawk* LPPs. Rather, the issue before the court was whether or not the West Pilots, as represented by the certified class representatives, had the right to participate in the US Airways/American seniority-integration process separate and apart from USAPA's role as their collective bargaining representative – an issue as to which both the MOU and *Allegheny-Mohawk* are silent. And, because the MOU is silent, there were no specific provisions in Paragraph 10 to be preserved, or "not be affected," by Section 117(a)(2). The *Addington* Court's decision, therefore, has no application to the Section 117(a)(2) issues in the current lawsuit – where USAPA is attempting to override the specific provisions of MOU Paragraph 10 with the contrary provisions of *Allegheny-Mohawk* Section 13(a).

Indeed, USAPA's reading of the *Addington* Court's decision would render the decision logically incoherent because much of the court's reasoning was based on the specific timelines and procedures set forth in the MOU (including in MOU Paragraph 10(a)). *See Addington* Order at 5 n.4 ("It is crucial to note the terms of the MOU state that if arbitration pursuant to McCaskill-Bond is needed, it will not occur until after a new collective bargaining representative for all pilots is certified. In other words, before a seniority arbitration can occur, a new certified representative will be in place for all the pilots.") (citation omitted); 20 ("As contemplated by the MOU, in the very near future an election will take place and a new representative will be chosen by all of the post-merger pilots. It is almost certain USAPA will lose that election. Once that happens, USAPA will no longer be entitled to participate in the seniority integration proceedings." (footnote omitted)). Given that the court in *Addington* expressly viewed the timelines and procedures set forth in Paragraph 10 of the MOU as applicable to the US Airways/American seniority integration process, USAPA's contention that the *Addington* Court decided that such timelines and procedures are ineffectual is manifestly untenable.

B. US Airways' Motion To Enjoin Arbitration In *Addington* Sought To Preserve The District Court's Jurisdiction Over Statutory Claims Under McCaskill-Bond.

USAPA's suggestion that US Airways (but not American, which was not involved in the *Addington* litigation) has taken inconsistent positions in the past is also plainly incorrect. (Opp. at 5.) In its motion to enjoin an arbitration sought by USAPA in MTA Dispute #2, US Airways asserted:

> the indisputable legal principle that participation in the seniority integration process is subject to the requirements of a federal statute (i.e., the McCaskill-Bond amendment), a point that is recognized by the MOU and, in any event, could not be circumvented by private agreement…A labor arbitrator has no authority to adjudicate rights arising under federal law.

(*See* Opp. at 5 & USAPA Exh 2 a 2, 3.) In *Addington*, US Airways took the position that a board of adjustment under MOU Paragraph 20 did not have the authority to decide whether the West Pilots had the statutory right – derived from Sections 3 and 13 of the CAB's *Allegheny-Mohawk* LPPs (as incorporated by McCaskill-Bond) – to separate participation in the seniority-integration process and thus to participate in discussions for the formulation of a Protocol Agreement. As noted in Section II.A above, the MOU is silent on the subject of the West Pilots' role in the seniority-integration process and, as a result, the dispute between US Airways and USAPA over whether the West Pilots had a right to participate could only be resolved by reference to external law. That is entirely consistent with what the Company is arguing in this proceeding – issues arising under McCaskill-Bond are to be determined by this Court and issues arising under the MOU are to be determined by the Paragraph 20 board of adjustment.

III. THERE ARE NO DISPUTED ISSUES OF MATERIAL FACT WITH RESPECT TO THE COMPANY'S MOTION TO COMPEL ARBITRATION

USAPA argues that the Company's motion to compel arbitration should be evaluated under the Rule 56 summary judgment standard applied by the court in *PCH Mutual Ins. Co. v. Casualty & Surety, Inc.*, 569 F. Supp. 2d 67, 73-74 (D.D.C. 2008), because "the relief [Defendants] seek is analogous to compelling arbitration under the

Federal Arbitration Act." (Opp. at 7.) USAPA's argument should be rejected for two main reasons.

First, USAPA cites no authority (and the Company is aware of none) for the proposition that the Federal Arbitration Act (the "FAA"), 9 U.S.C. §§ 1 *et seq*., which applies to private arbitration agreements and expressly identifies circumstances under which arbitration is not to be compelled, governs a motion to compel arbitration based on a collective bargaining agreement ("CBA") that was negotiated pursuant to the RLA, a statute which mandates without express exception that all "minor disputes" must be resolved through arbitration. *See* 45 U.S.C. § 184 (requiring carriers and unions to establish boards of adjustment to adjudicate "disputes . . . growing out of . . . the interpretation or application of agreements concerning rates of pay, rules, or working conditions [i.e., CBAs]."). In fact, courts routinely invoke and rely upon the RLA, and do not even mention the FAA, when granting motions to compel arbitration with respect to disputes regarding airline-industry CBAs. *See, e.g., Air Line Pilots Ass'n v. Fed. Ex.*, 402 F.3d 1245, 1248 (D.C. Cir. 2005); *Ass'n of Flight Attendants v. United Airlines, Inc.*, 71 F.3d 915, 917 (D.C. Cir. 1995); *Ass'n of Flight Attendants v. Delta Air Lines, Inc.*, 879 F.2d 906, 917 (D.C. Cir.1989).

Second, the issue before the court in *PCH Mutual* was whether there was a genuine issue of material fact as to the ***arbitrability*** *of the parties' underlying dispute*, not as to the ***merits*** of their dispute. *PCH Mutual*, 569 F. Supp. 2d at 77. USAPA ignores that distinction, and conflates the questions regarding the proper interpretation of the MOU and McCaskill-Bond with the question regarding whether the disputed contract-

interpretation issues identified by the Company in Section I fall within the scope of the RLA's mandatory arbitration provision, 45 U.S.C. § 184, and MOU Paragraph 20's similarly-worded arbitration clause (requiring arbitration of "any dispute over the interpretation or application of this Memorandum [i.e., the MOU]").[5] And while USAPA identifies disputed issues of material fact regarding the ***merits*** of the parties' contract-interpretation disputes concerning MOU Paragraph 10 (which, according to Defendants, must be resolved by an arbitrator), USAPA does not and cannot identify any material disputes of fact regarding the ***arbitrability*** of those contract-interpretation disputes. There can be no question that the Company has identified disputes regarding the "interpretation or application" of the MOU that must be resolved in order for the Court to adjudicate USAPA's claim under the McCaskill-Bond statute.

USAPA's failure is fatal to its argument, because the Court must order arbitration unless it finds, "with positive assurance," that "the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Fed. Ex.*, 402 F.3d at 1248 (*quoting United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582-583 (1960)); *see also Air Line Pilots Ass'n v. Delta Air Lines, Inc.*, 863 F.2d 87, 91-92 & 93-94 (D.C. Cir. 1988). The Company, here, does not seek to have an arbitrator decide "issues of rights under McCaskill-Bond" (Opp. at 7-8),

[5] USAPA, citing *PCH Mutual*, asserts that the Company (and the APA) have the burden to "demonstrate the absence of a genuine issue of material fact that Allegheny-Mohawk Section 13(a) does not govern the parties' dispute because Paragraph 10 of the MOU constitutes a valid agreement under McCaskill-Bond Section 117(a)(2) or Section 13(b) of Allegheny-Mohawk, and that no disputed material fact exists concerning the substantive arbitrability question whether the parties agreed to submit issues of rights under McCaskill-Bond to arbitration." (Opp. at 7-8.)

and any suggestion by USAPA to the contrary is both meritless and misleading. The Company does, however, seek to have an arbitrator decide disputed issues of contract interpretation and there is no basis to conclude – let alone to conclude "with positive assurance" – that the RLA's and MOU's arbitration clauses are not "susceptible of an interpretation" that would cover the parties' MOU-interpretation disputes.

IV. A STAY OF THIS CASE WILL AID THE COURT IN ADJUDICATING THE MATTERS BEFORE IT WITHOUT UNDUE DELAY

USAPA argues that "no purpose is served by a stay of this litigation." (Opp. at 20.) As explained above and in the Company's memorandum in support of its motion to compel arbitration, a stay of this case pending expedited arbitration pursuant to MOU Paragraph 20 (which contemplates resolution of the arbitrated claims within 30 days following the first day of the expedited hearing), will allow this Court subsequently to determine the ultimate statutory issues quickly and efficiently. *See, e.g., Northwest Airlines, Inc.*, 627 F.2d at 278 ("[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 CBA], and arbitration, if had, may either resolve the entire controversy or at least aid in the solution by the court of the statutory contentions"). A stay would not cause undue delay or harm any party to this proceeding, and is consistent with precedent in this Circuit.[6]

[6] The Company believes that the briefing before this Court adequately and thoroughly addresses the issues to be decided, and scheduling oral argument would only serve to delay unnecessarily any board of adjustment hearing and decision as well as the ultimate decision on the merits by this Court.

CONCLUSION

For all the reasons stated above, and in the Company's memorandum in support of its motion to compel, 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 30, 2014

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CERTIFICATE OF SERVICE

I hereby certify that, on May 30, 2014, a copy of the foregoing was electronically filed via the Court's ECF System. Notice of this filing will be sent to all parties of record by operation of the Court's electronic filing system.

/s/ Robert A. Siegel
Robert A. Siegel