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. 14-cv-00328 (BAH)

DEFENDANTS' JOINT MOTION

FOR A PROTECTIVE ORDER TO STAY ALL DISCOVERY

AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

Defendants US Airways, Inc., American Airlines, Inc. (collectively "the Company") and the Allied Pilots Association ("APA") respectfully move this Court for a protective order staying all discovery pending this Court's determination of defendants' motions to compel arbitration and stay proceedings and, if those motions are granted, pending completion of the arbitration process.

INTRODUCTION

On May 2, 2014, defendants each filed motions to compel arbitration and to stay proceedings (Dkts. 26 & 27) on the ground that, pursuant to the federal Railway Labor Act, the parties' disagreement regarding the interpretation of Paragraph 10 of their Memorandum of Understanding ("MOU") is subject to the mandatory and exclusive jurisdiction of the arbitral board of adjustment established by Paragraph 20 of the MOU. Defendants explained that a stay of all proceedings before this Court, pending the results of the arbitration, was necessary given that the statutory claims asserted by plaintiff US Airline Pilots Association ("USAPA") in this case cannot be adjudicated without first resolving the parties' disputes over the correct interpretation of their MOU. *See* Dkt. 26 at 15-18; Dkt. 27 at 15-17. On May 16, 2014, two weeks after defendants filed their motions to compel arbitration and stay proceedings, USAPA served document requests on all defendants, most of which relate to the parties' contract-interpretation disputes.[1]

[1] USAPA's requests seek documents relating to the following categories of information: (1) the negotiation of the MOU (specifically including Paragraphs 10 and 20); (2) the negotiations for a Seniority Integration Protocol Agreement pursuant to Paragraph 10(f) of the MOU; (3) the parties' contract-interpretation grievances under the MOU (i.e., MTA Disputes Numbers 2, 4 and 5), including the specific grievance which defendants seek to arbitrate through their motion; (4) specific events in the prior *Addington* litigation in the District of Arizona (i.e.,

See Declaration of Chris A. Hollinger (filed concurrently herewith), Exs. A, B & C. Because only the arbitral board of adjustment has jurisdiction to order discovery with regard to the parties' contract-interpretation dispute, and because it is unclear what (if any) other issues will remain before the Court upon completion of the arbitration of the contract-interpretation disputes, proceeding with USAPA's requested discovery at this time would be wasteful and unnecessary. Thus, a stay of discovery pending resolution of defendants' motions and, if those motions are granted, pending the outcome of the arbitration, is appropriate.[2]

ARGUMENT

Upon "some 'showing of good cause'" by the moving party, "a trial court possesses broad discretion in issuing a protective order and determining what degree of protection is required." *Purcell v. MWI Corp.*, 209 F.R.D. 21, 27-28 (D.D.C. 2002). In the instant case, there is good cause for the issuance of a protective order staying all discovery pending resolution of the motions to compel arbitration and stay proceedings for two reasons. First, most of USAPA's discovery requests seek information directed to the parties' contract-interpretation disputes, which, as explained in defendants' motions, are subject to the mandatory and exclusive jurisdiction of the arbitral board of adjustment established by Paragraph 20 of the MOU in accordance with the requirements of the

---

Judge Silver's January 10, 2014 Order, US Airways' post-judgment motion to modify Judge Silver's Order, and Judge Silver's March 31, 2014 Order in response to that motion); and (5) specific events in this lawsuit (i.e., the defendants' motions to compel arbitration). Category Nos. 1, 2, and 3 seek information related solely to the parties contract-interpretation dispute.

[2] A telephone conference was held with the Court regarding the instant dispute on June 13, 2014. At the conclusion of that conference, the Court granted defendants permission to file a motion for protective order.

RLA. It is for the arbitrator, and not this Court, to decide what (if any) pre-hearing discovery will be allowed, consistent with the Railway Labor Act's principles and precepts, including the prompt and inexpensive resolution of disputes. *See, e.g.*, *Pac. Fruit Express v. Union Pac. R.R.*, 826 F.2d 920, 923 (9th Cir. 1987) ("We conclude that the kind of court-ordered discovery sought in this case is incompatible with the aims and structure of the Railway Labor Act."); *Air Line Pilots Ass'n v. Trans World Airlines, Inc.*, 729 F. Supp. 888, 890 (D.D.C. 1989) ("[T]his Court adopts and will follow the Ninth Circuit's conclusion that 'the extensive judicial intervention that court-ordered disclosure would require is inconsistent with the history and principles of the Railway Labor Act.'") (internal citation omitted). USAPA should not be allowed to use the Federal Rules of Civil Procedure to seek discovery pertaining to a dispute over which this Court lacks jurisdiction.

Second, the parties cannot know what disputed factual and legal issues, if any, will remain before the Court until the motions to compel arbitration are decided and, if those motions are granted, until the outcome of the arbitration is known. Once an arbitrator resolves the parties' contract-interpretation disputes, it may well be the case that no discovery is required to dispose of the remaining claims before the Court; that is because any remaining issues will likely be limited to disputes over the interpretation and application of the federal McCaskill-Bond statute, and such disputes raise pure questions of law. To the extent any discovery is required following the arbitration, the parties cannot possibly know what discovery requests might be appropriate until the arbitrator issues a decision. Proceeding with discovery at this time would therefore be premature

and would constitute an unnecessary waste of both this Court's and the parties' resources. *See Air Line Pilots Ass'n v. Miller*, 523 U.S. 866, 880 n.6 (1998) (recognizing "district courts' discretion to defer discovery or other proceedings pending the prompt conclusion of arbitration" as part of "the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants") (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-255 (1936)); *see also PCH Mut. Ins. Co., Inc. v. Cas. & Sur., Inc.* 569 F. Supp. 2d 67, 77-78 (D.D.C. 2008) (staying "discovery related to the merits of this litigation pending a resolution of the threshold arbitrability issue").

CONCLUSION

For all the reasons stated above, defendants respectfully move this Court for a protective order staying all discovery until twenty (20) days following the Court's resolution of defendants' motions to compel arbitration and stay proceedings and, if those motions are granted, until twenty (20) days following the issuance of the arbitrator's decision.

Dated: June 18, 2014.

O'Melveny & Myers LLP

By: /s/ Robert A. Siegel

Robert A. Siegel (D.C. Bar No. 1004474)
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
rsiegel@omm.com

Chris A. Hollinger (*pro hac vice*)
Susannah B. Howard (*pro hac vice*)
O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111-3305
Telephone: (415) 984-8700
Facsimile: (415) 984-8701
chollinger@omm.com
showard@omm.com

Counsel for Defendants and Counterclaim-Plaintiffs US Airways, Inc. and American Airlines, Inc.

James & Hoffman, P.C.

By: /s/ Edgar N. James

Edgar N. James (D.C. Bar No. 333013)
Evin F. Isaacson
James & Hoffman, P.C.
1130 Connecticut Avenue, NW, Suite 950
Washington, DC 20036-3904
Telephone: (202) 496-0500
Facsimile: (202) 496-0555
ejames@jamhoff.com
efisaacson@jamhoff.com

Counsel for Defendant and Counter-Claim Plaintiff Allied Pilots Association