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)

REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION

FOR A PROTECTIVE ORDER TO STAY DISCOVERY

INTRODUCTION

Defendants US Airways, Inc., American Airlines, Inc. and the Allied Pilots Association (collectively, "defendants") demonstrated in their opening brief (Dkt. 32 ("Mot.")) that there is good cause for a stay of all discovery pending resolution of defendants' motions to compel arbitration and stay proceedings (Dkt. Nos. 26 & 27) and, if those motions are granted, pending the results of the arbitration, because (1) plaintiff US Airline Pilots Association ("USAPA") may obtain discovery pertaining to the parties' contract-interpretation disputes only upon the order of the arbitrator in accordance with the Railway Labor Act ("RLA") and board of adjustment procedures, and (2) proceeding with discovery on non-contract issues at this time would be wasteful and premature because discovery will likely be unnecessary once the arbitrator has issued a decision interpreting the contract. In its Opposition, USAPA argues primarily that a stay of discovery is unnecessary because, it says, "[t]here is no contract dispute" regarding the proper interpretation of the Memorandum of Understanding ("MOU") that requires arbitration. Dkt. 33 ("Opp.") at 2. In addition, USAPA contends that, even if defendants' motions to compel arbitration and stay proceedings are granted, the arbitration will not fully dispose of the claims pending before this Court and, therefore, a stay of discovery "will simply prolong this litigation." *Id*. at 6. For the reasons set forth below, USAPA's arguments are flawed.

ARGUMENT

I. AN ARBITRATOR HAS EXCLUSIVE JURISDICTION TO RESOLVE THE PARTIES' CONTRACT-INTERPRETATION DISPUTES.

Despite its repeated assertions that its claim in this case merely seeks a determination of the MOU's status under McCaskill-Bond and that there are no contractual issues to be resolved through arbitration, USAPA cannot explain how or why the parties' dispute over the proper interpretation of the MOU is not the fundamental question that must be answered before any legal issue under the McCaskill-Bond statute can be addressed. That such a dispute exists is undeniable. USAPA agreed to the process for integrating pilot seniority lists in Paragraph 10 of the MOU that it now seeks to repudiate by its claims in this lawsuit. In its effort to invalidate MOU Paragraph 10, USAPA contends that the MOU was not meant to qualify as a collective bargaining agreement under McCaskill-Bond Section 117(a)(2), or as an "alternative" arrangement under Section 13(b) of the *Allegheny-Mohawk* LPPs referenced in McCaskill-Bond, and that the pilot seniority integration must therefore be conducted according to the procedures set forth in *Allegheny-Mohawk* Section 13(a). (*See* Opp. at 2 & 4.) In order for USAPA to succeed, however, its interpretation of the MOU must prevail. The provisions in the MOU specifying that three arbitrators are to determine how the pilot seniority lists will be integrated, and specifying when the arbitration is to begin, must be construed as entirely meaningless under USAPA's interpretation, an interpretation that is very much disputed by defendants, as explained in their motions to compel arbitration

and stay proceedings.[1] (*See* Dkt. 26 at 9-10; Dkt. 27 at 8-10.) And the RLA mandates that any dispute over the meaning of the MOU must be resolved through arbitration before the board of adjustment established by Paragraph 20 of the MOU. (*See* Dkt. 26 at 10-12; Dkt. 27 at 10-15.) Accordingly, in this case, "[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 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."[2] *Air Line Pilots Ass'n v. Northwest Airlines, Inc.*, 627 F.2d 272, 275 (D.C. Cir. 1980); *see also* Dkt. 26 at 15-18; Dkt. 27 at 17.

II. BECAUSE THIS COURT LACKS JURISDICTION TO RESOLVE THE PARTIES' CONTRACT-INTERPRETATION DISPUTES, THE ARBITRATOR MUST DETERMINE WHAT DISCOVERY IS APPROPRIATE IN CONNECTION WITH THOSE DISPUTES; THE NEED FOR ANY OTHER DISCOVERY IS SPECULATIVE.

Contrary to USAPA's suggestion, defendants do not "mere[ly] allege that resources will be conserved by granting the stay." (Opp. at 5 (quoting *People with Aids Health Group v. Burroughs Wellcome Co.*, 1991 U.S. Dist. LEXIS 14389 at *2 (D.D.C

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[1] USAPA's denial of the existence of the parties' contract-interpretation disputes is contradicted by USAPA's own arguments in opposition to defendants' motions to compel arbitration and stay proceedings, which depend upon USAPA's interpretation of the MOU (*see* Dkt. 31 at 1-3), and by USAPA's discovery requests, which, *inter alia*, seek documents regarding the negotiation of the MOU and the failed negotiations to reach a Seniority-Integration Protocol Agreement pursuant to the MOU – documents that can only be relevant to the parties' contract-interpretation disputes.

[2] Despite its persistent denial of the existence of the parties' contract-interpretation disputes, USAPA offers no alternative for resolving the McCaskill-Bond claims in this lawsuit without first resolving the question of how to properly interpret Paragraph 10 of the MOU.

1991)).) Rather, defendants have demonstrated that an arbitrator has exclusive jurisdiction over much of the discovery sought by USAPA and that the arbitration will likely eliminate the need for further discovery. In these circumstances, a stay of discovery "is an eminently logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources." *Chavous v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.D.C. 2001) (quoting *Coastal States Gas Corp. v. Department of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979) (citations omitted)).

As defendants established in their opening brief, only an arbitrator may order discovery pertaining to a dispute over the meaning of a collective bargaining agreement, consistent with the principles and precepts of the RLA, and USAPA therefore cannot obtain discovery concerning disputed issues of contract interpretation using the Federal Rules of Civil Procedure. (Mot. at 3.) USAPA does not deny this well-established legal principle, nor can USAPA deny that many of its document requests seek information that is relevant only to resolving the parties' disputes over the proper interpretation of the MOU. Instead, USAPA attempts to distinguish the case law applying this legal principle by blithely reiterating its patently false mantra that "[t]his case … exclusively involves federal statutory claims within this Court's jurisdiction." (Opp. at 3.) However, simply because USAPA has invoked a federal statute in its complaint does not deprive the board of adjustment of its exclusive jurisdiction to resolve the parties' contract-interpretation disputes; to the contrary, arbitration of such disputes may only be avoided where Congress has "clearly expressed" an intent to override the provisions of the RLA. (*See*

Dkt. 26 at 12-15; Dkt. 27 at 13-15.) And because there is no "clearly expressed congressional intent in McCaskill-Bond to limit the application of the RLA's mandatory arbitration provisions" (Dkt. 26 at 14), the parties' contract-interpretation disputes remain subject to the exclusive jurisdiction of the board of adjustment established in Paragraph 20 of the MOU and any discovery ordered by the Court with respect to these disputes would encroach upon the arbitrator's jurisdiction.[3]

Just as the arbitration decision will narrow or eliminate the disputed issues for this Court to decide in adjudicating the status of the MOU under McCaskill-Bond, it will narrow or eliminate the disputed factual issues on which any discovery could conceivably be needed. (Mot. at 3-4.) This is because, regardless of whether USAPA or defendants ultimately prevail, the arbitration will largely, if not completely, resolve the factual disputes relevant to the determination of the MOU's status under McCaskill-Bond. Once those disputed facts have been finally resolved by the arbitrator, the only remaining issue for this Court to resolve will involve the meaning and application of McCaskill-Bond – an issue that raises pure questions of law. Accordingly, no discovery should be necessary

[3] USAPA's argument that discovery may be necessary to resolve a dispute over whether the parties agreed "to arbitrate the pilots' McCaskill-Bond rights" (Opp. at 4 & 6) is a red herring, because defendants do not seek to compel arbitration of the US Airways pilots' rights under the McCaskill-Bond statute. Rather, defendants seek to compel arbitration only with respect to the parties' disputes over the proper interpretation of the MOU – disputes which do not require the arbitrator to interpret or apply McCaskill-Bond. And there is no conceivable factual disagreement, warranting discovery, embedded in the purely legal question of whether a contract-interpretation dispute is subject to mandatory arbitration under the RLA. (*See* Dkt. 31 at 15-16; *see also* Dkt. 30 at 10-11 (explaining that RLA arbitrability is a threshold jurisdictional question routinely decided prior to discovery).)

once the contract-interpretation disputes are resolved in arbitration.[4] To proceed with discovery at this time would thus be premature and wasteful, because the parties would only be guessing as to what discovery may be relevant to the issues (if any) that remain in dispute following the arbitration.

While defendants' counterclaims in this case extend beyond the MOU's status under McCaskill-Bond, those counterclaims do not present disputed issues of fact materially different from the parties' contract-interpretation disputes and thus do not justify proceeding with discovery before the arbitrator's decision has been rendered. The Company's third counterclaim, which alleges that USAPA has violated Section 2, First, of the RLA, is based on and intertwined with the Company's contractual argument that USAPA was required by Paragraph 10(a) of the MOU to respond to the APA's and the Company's proposals for a method to select the three-arbitrator panel for the seniority-integration hearing, and that USAPA's continued refusal to respond violated Paragraph 10 (a) and therefore also constituted a failure "to exert every reasonable effort to make

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[4] USAPA's contention that "Defendants' motion doesn't even bother to explain what discovery might be unnecessary if an arbitrator resolves the 'contract interpretation dispute'" (Opp. at 6) ignores defendants' argument that no discovery may be necessary following the arbitration because the arbitrator will likely resolve all material factual disputes. (Mot. at 3.) For its part, USAPA offers no description of the potential discovery that may be necessary after the arbitration, merely asserting, without explanation, that "discovery will inevitably go forward." (Opp. at 6.)

USAPA's additional contention that defendants' submission of documents in support of their motions to compel arbitration and stay proceedings somehow discredits their argument that discovery at this stage would be premature and wasteful (Opp. at 6) is likewise misplaced. The substantive documents submitted by defendants to this Court (most of which are proposals from the MOU and Protocol Agreement negotiations that were exchanged among the parties, as well as public filings from the *Addington* litigation) were in USAPA's possession long ago, and submitting those documents with defendants' motions did not involve the burden or intrusion of a formal discovery process.

and maintain agreements" as required by Section 2, First. 45 U.S.C. § 152 (First). As with the McCaskill-Bond claim set forth in USAPA's complaint, this statutory counterclaim depends first upon the arbitrator's resolution of the parties' disagreement over the proper interpretation of Paragraph 10 of the MOU.

The only other claim before this Court is the APA's third counterclaim, which raises a pure question of law: whether USAPA will have the right under McCaskill-Bond to continue representing the pre-merger US Airways pilots in the seniority-integration process after the National Mediation Board extinguishes USAPA's certification as the collective bargaining representative under the Railway Labor Act of the pre-merger US Airways pilots. There are no disputed issues of fact relevant to this counterclaim and, therefore, no discovery is needed, either now or after arbitration of the parties' contract-interpretation disputes. There is thus no support for USAPA's contention that a stay of discovery will prolong the proceedings before this Court.

CONCLUSION

For all the reasons stated above, and for the reasons stated in their opening brief, defendants respectfully request that their joint motion for a protective order to stay all discovery be granted.

Dated: July 2, 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 K. 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 (*pro hac vice*)
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