IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-CV-371-RJC-DCK

US AIRWAYS, INC., Plaintiff, vs. US AIRLINE PILOTS ASSOCIATION and MICHAEL J. CLEARY, Defendants.	)	**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO VACATE THE PERMANENT INJUNCTION**

INTRODUCTION

On January 11, 2012, this Court issued a permanent injunction enjoining defendant US Airline Pilots Association ("USAPA") and its members from certain conduct relating to pilot operations. Doc. 91. Now, two years later, the circumstances forming the basis of plaintiff's complaint seeking an injunction and the Court's findings underlying the entry of the permanent injunction are no longer at issue or in effect, and the permanent injunction should be vacated.

FACTS

On July 29, 2011, plaintiff US Airways commenced this action against USAPA and its then President Michael Cleary, alleging that USAPA's membership was engaging in an unlawful pilot slowdown campaign. Doc. 1, at ¶1. At the time, USAPA and US Airways were involved in bitter and long-standing Section 6 of the Railway Labor Act ("RLA") contract negotiations. Doc. 72, at 6-7. Two months earlier, on May 27, 2011, USAPA had commenced an action against US Airways in the United States District Court for the Eastern District of New York alleging that US Airways was failing to exert every reasonable effort to bargain over a new collective bargaining agreement in violation of the RLA. 11-cv-02579-ARR-SMG, Doc. 12, at ¶3. The amended

complaint in that action further alleged that US Airways was engaging in a campaign of harassment, intimidation, and coercion of USAPA and its members for exercising their rights under the RLA for improved working conditions. *Id.*, at ¶2.

In the action against USAPA, US Airways alleged that USAPA had violated the status quo provisions of the RLA by engaging in a campaign "to cause nationwide flight delays and cancellations in order to put pressure on US Airways in its current collective bargaining negotiations." Doc. 1, at ¶1. After a preliminary injunction hearing on August 19 and 22, 2011, this Court granted plaintiff's motion for a preliminary injunction, finding, *inter alia*, that USAPA violated the status quo provisions of the RLA by engaging in an illegal slowdown for the purpose of obtaining a favorable collective bargaining agreement.[1] Doc. 72, at 33. USAPA and its members were enjoined from engaging in certain discrete conduct, which included slow taxiing, writing up all maintenance items, calling in fatigued, delaying flights, refusing to answer calls from scheduling, refusing to fly aircraft that meets the requirements for flight, refusing to accept voluntary overtime flying, and "permitting, instigating, authorizing, encouraging, participating in, approving, or continuing any interference with Plaintiff's airline operations, including, but not limited to, any slowdown, strike, work stoppage, sick-out, work to rule campaign, or any concerted refusal to perform normal pilot operations in violation of the RLA." Doc. 72, at 43-44. USAPA was ordered to "take all reasonable steps within its power to prevent" the prohibited conduct, including but not limited to, instructing all pilots to resume their normal working schedule and practices, and including in a notice to all pilots a directive to cease and desist all prohibited conduct. *Id*. USAPA was required to communicate the details of the preliminary

[1] The Court found insufficient evidence to hold President Cleary individually responsible for the slowdown. Doc. 72, at 33.

injunction to its membership in the specified manner, and to report its compliance to the court. *Id.* USAPA complied fully with this Court's order. Docs. 74, 75, and 80.

Thereafter, the parties agreed and stipulated that rather than proceed with litigation the preliminary injunction should be converted into a permanent injunction and that a final judgment would be entered in favor of US Airways, and on January 6, 2012, the parties made a joint application for such relief. Doc. 90. The joint motion was granted, and the preliminary injunction issued by the Court on September 28, 2011 was converted into a permanent injunction on January 11, 2012 and a final judgment entered in favor of US Airways on the same day. Doc. 91. To date, there has been no allegation that USAPA has violated the terms of the permanent injunction.

The Merger Between US Airways and American Airlines

In April 2012, US Airways announced its intention to pursue a merger with American Airlines ("American"), which was in Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York, *In re AMR Corp.*, Case No. 11-15463. In or around April 2012, USAPA, US Airways, American, and the Allied Pilots Association ("APA"), the collective bargaining representative for the American pilots, began negotiations for a Memorandum of Understanding regarding a Contingent Collective Bargaining Agreement ("MOU"). Declaration of Gary Hummel, ¶6. A copy of the MOU is annexed as Exhibit A to the Declaration of Patrick Szymanski. The MOU was executed by USAPA, US Airways, American and the APA in or around February, 2013. Hummel Decl., ¶6; Ex. A. The MOU provides that once the Bankruptcy Court approves American's plan of reorganization ("POR") (defined as the Effective Date), the terms and conditions of employment of the US Airways' pilots would be governed by the Merger Transition Agreement ("MTA"), which

consists of the 2012 APA/American collective bargaining agreement as modified by the MOU. Ex. A; Hummel Decl., at ¶¶8-9. The end result will be a joint collective bargaining agreement ("JCBA") that applies to the merged American and US Airways pilots. Ex. A; Hummel Decl., ¶9. The Bankruptcy Court approved the merger agreement between the two airlines on March 27, 2013. *In re AMR*, No. 7587, Case No. 11-15463, Doc. 7587. On April 15, 2013, American and US Airways filed a joint POR seeking approval of American's emergence from bankruptcy. *In re AMR*, No. 7587, Case No. 11-15463, Doc. 7631. The merger and POR became effective on December 9, 2013. *In Re AMR*, No. 7587, Case No. 11-15463, Doc. 11402.

On December 9, 2013, the Effective Date of the POR, the pay rates and other economic benefits for US Airways pilots became equal to those provided to American pilots. Hummel Decl., ¶11. The MOU provides for an industry average pay parity adjustment effective on January 1, 2016, which will bring pay for all the pilots of the merged airline into line with the two other major domestic carriers – Delta Airlines and United Airlines. *Id.* The increases in annual pay rates that went into effect on December 9, 2013 (all of which were retroactive to February 8, 2013) for US Airways 12-year captains operating the Airbus A320 aircraft is more than $40,000 annually for those pilots previously flying under the US Airways East CBA, and more than $20,000 annually for those pilots previously flying under the US Airways West CBA. *Id.* On December 9, 2013, the defined contribution rate (made by US Airways to a defined contribution plan on behalf of each eligible pilot) increased from 10% to 14% for all US Airways pilots. *Id.* On January 1, 2014, the pay rates for all pilots increased an additional 8%, and the defined contribution plan increased to 16%. A $40 million lump sum payment was also distributed to US Airways pilots. *Id.* In addition to the significant pay increases and the increases to the defined contribution plan, "no furlough" guarantees have also been implemented under the

MOU/MTA. *Id.* These benefits have all been of paramount importance to the US Airways pilots in their struggle for an industry-standard contract. *Id.*

When granting the preliminary injunction, the Court specifically found that USAPA's safety campaign and slowdown were "expressly" tied to its efforts in securing an industry standard contract and "obtaining a favorable CBA". Doc. 72, at 6-7, 33. Since then, the primary source of contention between the parties has been removed through the successful bargaining of the MOU, which resolves the underlying dispute between the parties that the Court identified as the reason for USAPA's action. Hummel Decl., ¶12. As the factual circumstances underlying this injunction are no longer operative, there is no reason for the injunction to remain in effect. Indeed, there have been no allegations that USAPA violated any of the terms of the injunction nor are any of the violations described above likely to occur in the future in light of the benefits conferred under the negotiated MTA and MOU. *Id.*

As the overall factual landscape prevailing at the time the injunction was sought, including, but not limited to the status of contract negotiations between the parties has dramatically changed, the injunction is no longer warranted and should be vacated in accordance with Rule 60(b)(5).[2]

ARGUMENT

LEGAL STANDARD ON A MOTION TO VACATE A PERMANENT INJUNCTION

"Under its inherent equity powers . . . a district court may modify a judgment if 'it is no longer equitable that the judgment should have prospective application.'" *Plyler v. Evatt*, 924 F.2d 1321, 1324 (4th Cir. 1991); *see also Alexander v. Britt*, 89 F.3d 194, 197 (4th Cir. 1996)

[2] Should this Court decline to apply Rule 60(b)(5), this Court may also consider this motion under Rule 60(b)(6) which provides federal courts with "broad authority… adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988).

("Accordingly, when confronted with any motion invoking . . . [Rule 60(b)(5)], a district court's task is to determine whether it remains equitable for the judgment at issue to apply prospectively and, if not, to relieve the parties of some or all of the burdens of that judgment on 'such terms as are just.'"). Thus, a party may seek vacatur or dissolution of an injunction under Fed. R. Civ. P. 60(b)(5) if "the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable." "Use of the disjunctive 'or' makes it clear that each of the three grounds for relief is independently sufficient and therefore that relief may be warranted even if petitioners have not 'satisfied' the original order." *Horne v. Flores*, 557 U.S. 433, 454 (2009).

A Rule 60(b)(5) motion may be premised on a "a significant change either in factual conditions or in law." *Agostini v. Felton*, 521 U.S. 203, 215 (1997), citing *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992). "A court errs when it refuses to modify an injunction . . . in light of such changes." *Id.*, at 215.

A Rule 60(b)(5) motion is not subject to the one-year time limitations of the first three subdivisions of Rule 60(b), and instead, "must be made within a reasonable time." Fed. R. Civ. P. Rule 60(c). "Reasonableness . . . is essentially judged by looking to 'the delay . . . from the time the party is deemed to have notice of the grounds for its Rule 60(b) motion.'" *Holland v. Virginia Lee Co., Inc.*, 188 F.R.D. 241, 248 (W.D.Va. 1999), quoting *Jones v. City of Richmond*, 106 F.R.D. 485, 489 (E.D.Va. 1985). "In measuring this delay, however, there is no set time period distinguishing timely from untimely motions outside of the absolute, one-year time frame for Rule 60(b)(1)–(3) motions. What constitutes a reasonable time will generally depend on the facts of each case." *Holland*, 188 F.R.D. at 248.

Unlike a Rule 60(b)(6) motion, the factors of public interest and relative fault are irrelevant when proceeding under Rule 60(b)(5) and there is no need to show "extraordinary circumstances" justifying the relief. *Valero Terrestrial Corp. v Paige*, 211 F.3d 112, 122, n. 2 (4th Cir 2000). While the burden is on the party seeking relief to establish that changed circumstances warrant relief, once the party carries this burden, a court abuses its discretion "when it refuses to modify an injunction or consent decree in light of such changes." *Horne,* 557 U.S. at 447, citing *Agostini,* 521 U.S. at 215; *see also Petties ex rel. Martin v. D.C.,* 662 F.3d 564, 566 (D.C. Cir. 2011) (reversing a district court for its failure to consider "changed circumstances" on a Rule 60(b)(5) motion).

Courts apply a "flexible standard" in determining whether it is no longer equitable for an injunction that has prospective application to remain in place. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 380 (1992) ("[Rule 60(b)] in providing that, on such terms as are just, a party may be relieved from a final judgment or decree where it is no longer equitable that the judgment have prospective application, permits a less stringent, more flexible standard.").

In deciding whether a moving party meets this standard, courts have identified a non-exhaustive list of factors in determining whether to vacate an injunction. These considerations include: the circumstances leading to entry of the injunction and the nature of the conduct sought to be prevented; the length of time since entry of the injunction; whether the party subject to its terms has complied or attempted to comply in good faith with the injunction; the likelihood that the conduct or conditions sought to be prevented will recur absent the injunction; whether the moving party can demonstrate a significant, unforeseen change in the facts or law; whether such changed circumstances have made compliance substantially more onerous or have made the decree unworkable; and whether the objective of the decree has been achieved and whether

continued enforcement would be detrimental to the public interest. *See North Carolina Alliance for Transp. Reform, Inc. v. United States Dep't of Transp.*, 713 F. Supp. 2d 491 (M.D.N.C. 2010); *MicroStrategy, Inc. v Bus. Objects, S.A.*, 661 F. Supp. 2d 548, 553 (E.D. Va. 2009); *Crutchfield v. United States Army Corps of Eng'rs,* 175 F. Supp. 2d 835, 844 (E.D. Va. 2001); *ePlus Inc. v. Lawson Software, Inc.*, 946 F. Supp. 2d 459, 466 (E.D. Va. 2013).

EQUITY MILITATES IN FAVOR OF VACATING THE PERMANENT INJUNCTION

The permanent injunction against USAPA has prospective application. It prohibits USAPA, its members, agents and employees from certain conduct that would interfere with US Airways' airline operations. Doc. 72, at 43. As such, applying its equitable powers, this Court can relieve USAPA from its terms if it is no longer equitable that the judgment should have prospective application. USAPA brings this motion within a "reasonable time" as the merger and the terms of the MTA and MOU only went into effect on December 9, 2013, and the airlines have yet to consolidate their operations. All the factors courts have identified as relevant to the determination of whether to vacate an injunction support the termination of the permanent injunction against USAPA.

A. Circumstances leading to entry of the injunction and the nature of the conduct sought to be prohibited.

An injunction must be tailored to a specific injury and it should be "no more burdensome than necessary." *See Kentuckians for Commonwealth Inc. v. Rivenburgh*, 317 F.3d 425, 436 (4th Cir. 2003), quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *see also Railway Labor Execs. Ass'n v. Wheeling & Lake Erie Ry. Co.*, 756 F. Supp. 249, 255 (E.D. Va. 1991) (Finding that a three-year term for the permanent injunction was too long, and instead issuing a twelve-month term.), *aff'd* 943 F. 2d 49 (4th Cir. 1991); *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 649 (9th Cir. 2011) (Vacating terms of the injunction that are more burdensome to the defendant than necessary to provide complete relief to the plaintiff.). Where the issues giving rise to the injunction have been resolved, the injunction should be terminated. *See South Carolina Stevedores Ass'n v. Local No. 1422, Int'l Longshoreman*, 765 F.2d 422 (4th Cir. 1985) (dissolving injunction against a strike where the dispute had been resolved with a binding arbitration award and there was no further contractual obligation remaining).

At the time this Court entered the injunction, USAPA and US Airways were engaged in a bitter and longstanding dispute over Section 6 contract negotiations. This Court issued an order that enjoined specific conduct related to that dispute, and USAPA has met each of those specific obligations. Furthermore, this Court found that the objectionable elements of USAPA's safety campaign were expressly linked to grievances over working conditions and obtaining "an industry standard contract." Doc. 72, at 6-7, 13, 33. USAPA and US Airways are no longer engaged in Section 6 collective bargaining. The MOU/MTA that is in effect provides a contract with significant pay increases and important job protections that is within the industry standard,, and USAPA's 2011 grievances with US Airways are no longer a source of contention between the parties as it was at the time the injunction went into effect. Hummel Decl., ¶¶3, 11-12.

As to injury, the negative impact to US Airways' operational performance is no longer an issue. *See* Doc. 72, at 27. Any injury to US Airways arising out of its dispute with USAPA has since been remedied and there is nothing left to address. Hummel Decl., ¶13. This factor weighs in favor of vacating the injunction.

B. Length of time since entry of the injunction.

Injunctions must be "carefully limited in time and scope to avoid unwarranted, non-remedial effects." *See Railway Labor Execs. Ass'n v. Wheeling & Lake Erie Ry. Co.*, 756 F. Supp. 249, 255 (E.D.Va. 1991) (citing *United States v. Holtzman*, 762 F.2d 720, 726 (9th Cir. 1985)), *aff'd* 943 F. 2d. 49 (4thCir. 1991).

One year has been held to be sufficient time for a permanent injunction addressing a union's self-help activities in violation of the RLA. *See Wheeling,* 756 F. Supp. at 255. In rejecting the carrier's request for a three-year permanent injunction, the district court in *Wheeling* held that "the permanent injunction in this matter should last only as long there is a realistic risk

that labor plaintiffs may resort to illegal self-help measures in connection with the instant dispute." *Id.*, at 255.

When issuing the permanent injunction, this Court did not set a time table for how long the injunction would be in place. At this point, the injunction has been in place for over two years. As there is no realistic risk that USAPA will resort to the prohibited conduct, this factor weighs in favor of vacating the injunction.

C. Whether USAPA has complied with the terms of the injunction.

Courts also consider whether an enjoined party has complied with the terms of the injunction in good faith. *See North Carolina Alliance for Transp. Reform, Inc. v. United States Dep't of Transp.*, 713 F. Supp. 2d 491, 513 (M.D.N.C. 2010) (holding that defendants' motion to dissolve an injunction should be granted "because Defendants have complied with its terms and continued application would no longer be equitable.").

As discussed above, the injunction has been in place for two years, and during that time, USAPA has fully complied with all the terms of the injunction, and there have been no allegations that USAPA has violated any of its terms. This factor weighs in favor of vacating the injunction.

D. Likelihood that the prohibited conduct will recur absent the injunction.

There is little if any likelihood that the prohibited conduct will occur in the future absent the injunction as the circumstances underlying the Court's findings – principally an outlet for dissatisfaction with pay and other working conditions – have been resolved. The MOU was submitted to the membership of USAPA for ratification and was overwhelmingly approved. *See Sec. & Exch. Comm'n v. Warren*, 583 F.2d 115, 118 (3d Cir. 1978) (affirming dissolution of

injunction where the violation of SEC requirements and regulations was "technical and there was little likelihood of recurrence.").

Since the time the injunction was entered by this Court, US Airways has merged with American, and the new merged airline is American Airlines Group. The US Airways pilots have obtained the industry standard contract which they long sought, ending their long-standing dispute. The MTA sets the essential terms and conditions of employment. As provided for in the MOU, a dispute resolution mechanism is in place where any disagreements arising out of negotiations for the JCBA will go to interest arbitration. *See* Hummel Decl. For all of these reasons, it is unlikely that the specific conduct prohibited by the injunction is likely to occur in the future.

E. Whether there is a significant, unforeseen change in the facts or law and whether such changed circumstances have made compliance substantially more onerous or the decree unworkable.

Courts have terminated injunctions where compliance has become untenable and unnecessary due to changed circumstances. *See Brennan v. Thor, Inc.,* 516 F.2d 999, 1000 (4th Cir. 1975) (affirming dissolution of an injunction against an employer to comply with the Fair Labor Standards Act, mindful that "the injunction was a continuing source of embarrassment to the defendant and tended to interfere with the orderly conduct of its business.); *Tobin v. Alma Mills*, 192 F.2d 133, 136 (4th Cir. 1951) (holding that it was proper for a district court to dissolve an injunction where, "[t]he continuance of the injunction was hampering the owners of the company in disposing of their stock and was accomplishing no useful purpose."), *cert. denied* 343 U.S. 933 (1952).

As discussed above, the relations between USAPA and US Airways have completely changed from the time US Airways commenced this action. The advent of the merger between

US Airways and American and entry into the MOU are significant developments that were unforeseen when this Court entered its injunction and which have resolved the contentious issues that gave rise to the disputes that caused US Airways to move for injunctive relief in the first instance.

F. Whether the objective of the decree has been achieved and whether continued enforcement would be detrimental to the public interest.

The objectives of the injunction have been served, and any further effect of the injunction would exceed the scope of the violations it was intended to remedy. *See Hayes v. N. State Law Enforcement Officers Ass'n,* 10 F.3d 207, 217 (4th Cir.1993) ("Although injunctive relief should be designed to grant the full relief needed to remedy the injury to the prevailing party, it should not go beyond the extent of the established violation."); *Consolidation Coal Co. v. Disabled Miners,* 442 F.2d 1261, 1267 (4th Cir.1971) ("Whenever the extraordinary writ of injunction is granted, it should be tailored to restrain no more than what is reasonably required to accomplish its ends."), *cert. denied* 404 U.S. 911 (1971).

USAPA and US Airways have moved beyond the stalled Section 6 negotiations for a new collective bargaining agreement that existed as of the date US Airways commenced its action in 2011. The injunction serves no purpose in this current phase of USAPA and US Airways' relationship. Continued enforcement would be detrimental to the public interest in that it would be a waste of judicial resources.

The equity factors all militate in favor of dissolution of the permanent injunction.

THE INJUNCTION SHOULD BE VACATED PURSUANT TO THE NORRIS-LAGUARDIA ACT

Injunctive relief arising out of a labor dispute is subject to the requirements of the Norris-LaGuardia Act ("NLGA"). *Bhd. of R.R. Trainmen, Enters. Lodge, No. 27 v. Toledo, Peoria &*

Western R.R., 321 U.S. 50 (1944); *United Airlines v. Int'l Ass'n of Machinists & Aerospace Workers*, 243 F.3d 349, 362 (7th Cir. 2001) ("[W]hen a carrier seeks an injunction against a union, a court must look not only to the RLA but also to the NLGA"); *District 17, United Mine Workers of Am. v. Apogee Coal Co.*, 13 F.3d 134 (4th Cir. 1993) (reversing district court's approval of application for injunction in connection with labor dispute where the requirements for a labor injunction under the NLGA, which imposes requirements in addition to the normal preliminary injunction standard, had not been considered by the court).

Section Nine of the NLGA states that injunctions growing out of labor disputes shall include "only a prohibition of such specific act or acts as may be expressly complained of in the . . . complaint." 29 U.S.C.A. § 109. Thus, labor injunctions are to be narrowly construed and should not apply prospectively except for limited circumstances, and should only apply to the specific allegations before the court. *See Westmoreland Coal Co., Inc. v. Int'l Union, United Mine Workers of Am.*, 910 F.2d 130, 138 (4th Cir. 1990).

A union's argument that an injunction ought to be terminated is to be given priority. *See Local 391, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Ward*, 501 F.2d 456, 458 (4th Cir. 1974) ("[I]n the context of a labor injunction in a federal court, the district court, in accordance with the policy of the Act, is obliged to hear and decide the motion to dissolve [an injunction] as a first order of business."). The district court in *Ward* had failed to consider the union's motion for dissolution of an injunction prior to deciding an employer's motion to hold a union in contempt of an injunction. The Fourth Circuit issued a *writ of mandamus* directing the district court to first consider the union's motion for dissolution. *Id.,* at 459.

Here, it is clear that the circumstances giving rise to the specific injury that warranted an exception to the NLGA's general prohibition on labor injunctions has passed, and USAPA is entitled to vacatur of the permanent injunction.

CONCLUSION

For the foregoing reasons, defendant USAPA's motion for vacatur of this Court's permanent injunction should be granted.

This 18th day of March, 2014

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CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing **Defendants' Memorandum in Support of Motion, Declaration of Patrick Szymanski, and Declaration of Gary Hummel in** on all of the parties to this cause by:

_____ Hand delivering a copy hereof to the attorney for each said party addressed as follows:

_____ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:

_____ Transmitting via facsimile transmission a copy hereof to the attorney for each said party as follows:

__X__ Electronic transmission (e-mail) to the attorney for each said party as follows:

_____ Depositing a copy hereof in a first-class, postage-prepaid, properly-addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed to the attorney for each said party as follows:

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This, the 18th day of March, 2014.

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