

April 2, 2010

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The Honorable Eric N. Vitaliano
United States District Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

RE: *Delta Air Lines, Inc. v. Association of Flight Attendants-CWA*,
Case No. 10-CV-1129 (ENV)(VVP)

Dear Judge Vitaliano:

I write on behalf of Defendant Association of Flight Attendants-CWA, AFL-CIO ("AFA") to request a pre-motion conference concerning AFA's motion to transfer this case to the United States District Court for the District of Columbia. As the motion will show, a related case is currently pending in the District of Columbia district court involving the same parties, the same factual background, and concerning the same legal issue as raised by Delta here. Accordingly, transfer will serve the interests of justice by conserving judicial resources and avoiding the prospect of inconsistent adjudications.

Factual Background and Pending Litigation

AFA is a labor organization representing flight attendants and is headquartered in Washington, DC. In April 2008, Delta Air Lines and Northwest Airlines reached an agreement to merge. Upon receiving government antitrust approval for the transaction, Delta acquired all of the ownership interests in Northwest in November 2008. AFA has been the certified bargaining representative for Northwest flight attendants under the Railway Labor Act ("RLA") since 2006. Delta flight attendants are unrepresented. Since receiving government approval, Delta and Northwest have been involved in an on-going process to merge their operations.

Beginning in November 2008, Delta began to take steps to merge the seniority lists for Delta and Northwest flight attendants. In response, AFA filed a lawsuit in federal court in the District of Columbia, alleging that Delta's seniority integration efforts violate the RLA and the McCaskill-Bond statute (a specialized federal enactment regarding the merger of employee

seniority in the airline industry). The case is captioned *Association of Flight Attendants-CWA v. Delta Air Lines, Inc.*, No. 1:08-cv-2009, and is assigned to Judge Richard W. Roberts.

Delta responded to AFA's lawsuit with a motion to dismiss. Delta asserted that the AFA's complaint stated a representational dispute under the RLA within the exclusive jurisdiction of the National Mediation Board ("NMB"). The NMB is the federal agency charged under the RLA with determining employee representation for collective bargaining purposes. AFA opposed Delta's motion to dismiss, arguing that the seniority integration dispute did not implicate the determination of collective bargaining representation for Delta employees. AFA also defended on the basis that the union's certification remained unchanged under NMB Rule 19.7, which specifically provides for the continuation of a union's certification in the merger setting unless and until a new certification is issued. Currently, Delta's motion to dismiss is fully briefed by the parties and awaiting a decision from the district court.

Now, Delta has initiated new litigation in this Court, in which the company also claims that a dispute between it and AFA constitutes a representation dispute within the exclusive jurisdiction of the NMB. The current dispute arises from a grievance filed by AFA under its collective bargaining agreement with Northwest. Delta has refused to arbitrate the grievance claiming that AFA's assertion of its contractual rights triggers a representation dispute, which only the NMB is authorized to resolve. As in the District of Columbia litigation, AFA will defend by asserting that its grievance claim does not implicate the determination of a collective bargaining representative for Delta flight attendants, particularly in light of NMB Rule 19.7.

Grounds for AFA's Motion to Transfer Venue

Under the federal venue statute, a district court may transfer any civil action to any other district where it might have been brought for the convenience of the parties and witnesses or in the interest of justice. 28 U.S.C. 1404(a). As this Court has recognized, "the existence of a related action in the transferee district is a strong factor to be weighed with regard to judicial economy, and may be determinative." *Rabbi Jacob Joseph School v. The Province of Mendoza*, 342 F. Supp. 2d 124, 130 (E.D.N.Y. 2004). Here, the same parties are already involved in litigation in the transferee court. As with the action brought in this Court, the District of Columbia case also grows out of the same basic transaction, the merger of Delta and Northwest, and therefore the factual overlap between the two cases is substantial. And, in its new complaint, Delta asks this Court to decide the same legal issue that is currently before the District of Columbia district court, *i.e.* whether a dispute between the parties constitutes a representation dispute with the jurisdiction of the NMB. In fact, this legal issue is fully briefed before Judge Roberts and awaiting his decision. In the interest of judicial economy, two courts should not expend their resources on the same legal issue growing out of the same transaction.

In contrast to the close connection between this action and the pending case in the District of Columbia, there is no connection between the events giving rise to this case and this forum. In fact, none of the events surrounding the AFA grievance which prompted Delta to file this action occurred in this forum, and none of the participants in handling the grievance are

