

3. Paragraph 3 consists of legal argument, as to which no response is required. To the extent any response is required, the allegations in paragraph 3 are denied.

4. Paragraph 4 consists of legal argument, as to which no response is required. To the extent any response is required, the allegations in paragraph 4 are admitted. AFA further avers that, although venue lies in this district, venue should be transferred to the United States District Court for the District of Columbia because litigation is currently pending in that court involving the same parties, the same factual background, and the same legal issue.

5. AFA admits the allegations contained in paragraph 5.

6. AFA admits the allegations contained in the first through fourth sentences of paragraph 6. AFA denies the fifth sentence in paragraph 6, and avers that in two prior representation elections involving Delta flight attendants less than a majority of eligible flight attendants voted and for that reason AFA did not obtain certification under the National Mediation Board's rules governing representation elections.

7. Paragraph 7 consists of legal argument, as to which no response is required. To the extent any response is required, the allegations in paragraph 7 are denied.

8. Paragraph 8 consists of legal argument, as to which no response is required. To the extent any response is required, the allegations in paragraph 8 are admitted.

9. Paragraph 9 consists of legal argument, as to which no response is required. To the extent any response is required, the allegations in paragraph 9 are denied.

10. Paragraph 10 consists of legal argument, as to which no response is required. To the extent any response is required, the allegations in paragraph 10 are admitted.

11. AFA admits the allegations contained in the first sentence of paragraph 11. In response to the second sentence of paragraph 11, AFA relies upon its July 27, 2009 application to speak for itself and denies Plaintiff's characterization of that document. In response to the third sentence of paragraph 11, AFA admits that it withdrew its representation application on November 3, 2009, but denies the remaining allegations. AFA admits the allegations contained in the fourth sentence of paragraph 11.

12. AFA denies the allegations contained in paragraph 12.

13. AFA admits the allegations contained in paragraph 13.

14. AFA admits the allegations contained in the first sentence of paragraph 14. In response to the second and third sentences of paragraph 14, AFA responds that ALPA's combined collective bargaining agreement speaks for itself and denies Plaintiff's characterization of that agreement.

15. AFA admits the allegations contained in the first and second sentences of paragraph 15. AFA lacks information sufficient to form a belief as to the truth of the allegations contained in the third sentence of paragraph 15. In response to the fourth sentence of paragraph 15, AFA avers that on December 8, 2008, an arbitration award was issued that set forth an integrated system seniority list for Delta pilots. In further

response, AFA lacks knowledge or information sufficient to form a belief as to whether the pre-merger Northwest Airlines, Inc. pilots' system seniority list terminated.

16. AFA admits the allegations contained in paragraph 16, except that it lacks knowledge or information sufficient to form a belief as to whether or to what extent Delta has integrated pre-merger Northwest and pre-merger Delta aircraft mechanics and other groups of ground employees.

17. In response to the first sentence of paragraph 17, AFA avers that the Federal Aviation Administration issued a single operating certificate to Delta on December 31, 2009, but lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in the first sentence of paragraph 17. AFA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 17.

18. AFA lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 18, except that AFA admits the allegations contained in the seventh sentence of paragraph 18.

19. The first sentence of paragraph 19 consists of a characterization of fact, as to which no response is required. In response to the second sentence of paragraph 19, AFA admits that pre-merger Northwest flight attendants began wearing Delta uniforms on or about March 31, 2009, but lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in the second sentence of paragraph 19. AFA admits the allegations contained in the third sentence of paragraph 19. AFA lacks

knowledge or information sufficient to form a belief about the truth of the allegations in the fourth sentence of paragraph 19. AFA admits the allegations contained in the fifth and sixth sentences of paragraph 19, but avers that under Section 1 of the AFA-Northwest collective bargaining agreement Delta is required to keep pre-merger Northwest and pre-merger Delta flight attendants separate and to continue the rates of pay, rules and working conditions set forth in the collective bargaining agreement for pre-merger Northwest flight attendants.

20. AFA admits the allegations contained in the first sentence of paragraph 20. In response to the second sentence of paragraph 20, AFA states that its collective bargaining agreement speaks for itself and denies Delta's characterization of that agreement.

21. AFA admits the allegations contained in paragraph 21.

22. AFA denies the allegations contained in paragraph 22.

23. AFA lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23.

24. AFA lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24.

25. AFA reasserts its responses to each and every allegation in paragraphs 1 through 24 of Plaintiff's Complaint as if set forth herein in their entirety.

26. AFA denies the allegations contained in paragraph 26.

27. AFA denies the allegations contained in paragraph 27.

28. AFA denies the allegations contained in paragraph 28.

29. AFA denies the allegations contained in paragraph 29.

Further answering the Complaint, AFA denies each and every one of the requests or prayers for relief set forth in Plaintiff's Complaint, denies each and every allegation not specifically admitted, denied or modified, and denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

Second Defense

The Court lacks subject matter jurisdiction because AFA's Scope Clause Grievance is a minor dispute under the RLA over which the System Board of Adjustment has exclusive jurisdiction.

Third Defense

Plaintiff fails to state a claim upon which relief can be granted because AFA's Scope Clause Grievance does not raise a representation dispute within the jurisdiction of the National Mediation Board ("NMB").

Fourth Defense

The Court lacks jurisdiction under the Norris-LaGuardia Act ("NLGA"), 29 U.S.C. §§ 101-115, to grant the injunctive relief that Plaintiff seeks.

AFA reserves the right to raise other affirmative defenses that may subsequently become or appear applicable to some or all of Plaintiff's claims.

COUNTERCLAIM COMPLAINT

1. AFA hereby counterclaims against Delta Air Lines under the Railway Labor Act (“RLA”), Section 2, First and Section 204. 45 U.S.C. § 152, First and § 184. AFA requests declaratory and injunctive relief in order to compel Delta to engage in expedited arbitration of AFA’s Scope Clause Grievance, which constitutes a minor dispute under the RLA.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337 because it arises under provisions of the RLA, 45 U.S.C. §§ 155-188, a federal statute regulating interstate commerce.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant Delta is subject to personal service in this judicial district and/or operates its business in this district.

Parties

4. Plaintiff AFA is an unincorporated association organized for the purpose and objective of acting as a labor organization within the meaning of Section 1, Sixth, of the RLA, 45 U.S.C. § 151, Sixth. AFA is headquartered in Washington, DC. At all times relevant to the matters complained of herein, AFA has been and is the certified bargaining representative for the craft or class of flight attendants employed by Northwest Airlines, Inc. (“Northwest”).

5. Defendant Delta is a Delaware corporation and air carrier maintaining its business headquarters in Atlanta, GA. Delta is a “common carrier” within the meaning of Section 201 of the RLA, 45 U.S.C. § 181, and therefore is subject to the provisions of the RLA.

Factual Background

6. AFA has served as the certified bargaining representative for the craft or class of flight attendants employed by Northwest since July 2006. AFA and Northwest are parties to a collective bargaining agreement, which does not become amendable until December 31, 2011.

7. On or about April 14, 2008, Northwest and Delta reached an agreement to merge, with Delta agreeing to acquire Northwest. Upon receiving government antitrust approval for the transaction, Delta acquired all of the ownership interests in Northwest on October 29, 2008. Since that time, Delta and Northwest have been involved in an on-going process to merge their operations.

8. During the merger, Delta has continued to recognize and treat with AFA as the certified representative of Northwest flight attendants, as required under Section 2, Ninth of the RLA, 45 U.S.C. § 152, Ninth. Delta has also continued to apply the terms and conditions of the AFA collective bargaining agreement covering Northwest flight attendants, as required both under the RLA and under the terms of Section 1 of the AFA-Northwest collective bargaining agreement.

9. RLA Section 204 imposes a duty upon carriers by air and represented employees to establish boards of adjustment in order to resolve disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. 45 U.S.C. § 184. Disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions are known as “minor disputes” in the parlance of RLA practitioners.

10. As required, the AFA-Northwest collective bargaining agreement establishes the Northwest Airlines Flight Attendant System Board of Adjustment (“System Board”) to hear and resolve minor disputes. The System Board is an arbitration panel consisting of three members, one appointed by the company, one appointed by the union, and one neutral member.

11. The collective bargaining agreement also specifically provides that: “The System Board shall have jurisdiction over disputes between any Flight Attendant covered by this Agreement and the Company growing out of grievances or out of the interpretation or application of any terms of this Agreement.”

12. The parties have continued to arbitrate grievances before the System Board throughout the merger process.

13. Section 1 of the AFA-Northwest collective bargaining agreement has a section known as the “Scope Clause.” In pertinent part, the Scope Clause provides: “All present and future cabin passenger service of the Company operating in aircraft operated by pilots on the Pilot System Seniority List of Northwest Airlines, Inc. shall be performed

exclusively by the Flight Attendants on the Northwest Airlines, Inc. Flight Attendant System Seniority List under the terms of this Agreement”

14. Section 1 of the AFA-Northwest collective bargaining agreement also has a section entitled “Successors.” In pertinent part, the successorship provision states: “This Agreement shall be binding upon any successor including, but not limited to, any merged company or companies, purchaser, assign, assignee, transferee, administrator, receiver, executor and/or trustee (hereinafter ‘successor’), of the Company which acquires ownership and/or control of all or substantially all of the equity securities and/or assets of the Company.”

15. The AFA-Northwest collective bargaining agreement provides for expedited arbitration before the System Board of Adjustment for any grievance arising under Section 1. Within three days of submission of the dispute to the System Board, the parties are to agree upon the selection of a neutral arbitrator. If the parties are unable to agree, either party may make application to the National Mediation Board (“NMB”) for the appointment of a neutral. In any event, the dispute must be heard no later than 60 days following submission of the matter to the System Board (subject to the availability of the neutral arbitrator), and must be decided no later than 30 days following the hearing.

16. Section 25.A of the AFA-Northwest collective bargaining agreement states “The Company agrees that if it disposes of its operations as a whole, it shall require the

acquiring corporation to assume this contract and the Union hereby agrees that such corporation may be substituted for the Company.”

17. On March 4, 2010, AFA filed a grievance, alleging the violation of Sections 1 and 25 of the collective bargaining agreement (“Scope Clause Grievance”). The grievance specifically alleged that on March 2, 2010, the company operated flight 2586 with a pilot crew consisting of both pre-merger Northwest pilots and pre-merger Delta pilots in violation of AFA’s Scope Clause. The grievance further alleged that the Company had or will operate aircraft with pre-merger Northwest pilots, but without premerger Northwest flight attendants, and that the Company plans to operate aircraft with a single flight attendant crew of both pre-merger Northwest and Delta flight attendants, also in violation of AFA’s scope clause.

18. On March 5, 2010, AFA submitted the Scope Clause Grievance to expedited arbitration under the terms of Section 1 of the collective bargaining agreement.

19. On March 12, 2010, Delta sent a letter to AFA, indicating that it was unwilling to arbitrate the Scope Clause grievance and instead intended to file a complaint seeking a court ruling that the grievance raises a representation dispute within the exclusive jurisdiction of the NMB. On the same date, Delta filed this action.

First Claim

20. Section 204 of the RLA requires that every air carrier and its represented employees establish a System Board of Adjustment and submit all minor disputes to the System Board for resolution. 45 U.S.C. § 184.

21. In refusing to arbitrate AFA's Scope Clause Grievance, Delta has violated Section 204 of the RLA.

Second Claim

22. Section 2, First of the RLA imposes a duty upon carriers and employees "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions." 45 U.S.C. § 152, First. The Supreme Court has referred to this requirement as the "heart of the Railway Labor Act." *Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 377-78 (1969). It constitutes a judicially enforceable obligation applicable to both carriers and unions. *Chicago & N.W. Ry. v. United Transp. Union*, 402 U.S. 570, 578 (1971).

23. The AFA-Northwest collective bargaining agreement specifically provides for expedited arbitration before the System Board of grievances arising under Section 1 of the agreement.

24. Thus, in refusing to go forward with expedited arbitration of AFA's Scope Clause Grievance, Delta has violated its statutory duty to maintain the AFA collective bargaining agreement.

Prayer for Relief

Wherefore, AFA respectfully requests that the Court grant the following relief:

- A. Enter a declaratory judgment under 28 U.S.C. § 2201 that AFA's Scope Clause Grievance is a minor dispute that must be resolved by the System Board pursuant to RLA Section 204;

- B. Enter a declaratory judgment under 28 U.S.C. § 2201 that Delta has violated its duty under RLA Section 2, First by refusing to engage in expedited arbitration of AFA's Scope Clause Grievance before the System Board;
- C. Enter an order granting AFA injunctive relief compelling Delta to arbitrate the Scope Clause Grievance on an expedited basis;
- D. Enter an order awarding AFA its attorneys' fees and other costs associated with this action;
- E. Enter an order granting further relief as the Court may deem proper.

Respectfully submitted,

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*Applications for admission *pro hac vice* submitted.