

O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, New York 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2061
Robert A. Siegel
Jeffrey I. Kohn

Attorneys for Plaintiff Delta Air Lines, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DELTA AIR LINES, INC.,

Plaintiff,

-against-

ASSOCIATION OF FLIGHT ATTENDANTS,
CWA,

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Delta Air Lines, Inc. ("Delta"), by and through its counsel, O'Melveny & Myers LLP, for its Complaint against the Association of Flight Attendants, CWA ("AFA"), alleges as follows:

NATURE OF THE ACTION AND RELIEF SOUGHT

1. Delta brings this action for declaratory and injunctive relief to prohibit the AFA from pursuing a grievance and arbitration proceeding styled as Grievance No. 88-77-02-036-10 (the "Scope Clause Grievance" or the "Grievance") that was initiated by the AFA pursuant to a collective bargaining agreement the AFA entered into with Northwest Airlines, Inc. ("Northwest") prior to Northwest's acquisition by and merger into Delta. Although the AFA filed the Scope Clause Grievance as the union representative for those Delta flight attendants who were employed by Northwest prior to the merger, the Grievance would not affect only pre-

merger Northwest flight attendants but instead would also significantly limit the work assignments of more than 13,000 pre-merger Delta flight attendants (approximately 65% of the combined post-merger flight attendant work group), who are not represented by the AFA or any other union. The Scope Clause Grievance additionally seeks to limit the types of post-merger Delta-operated aircraft that more than 12,000 pre-merger Northwest and pre-merger Delta pilots may fly even though these pilots are represented by a union other than the AFA.

2. Because it seeks to directly affect the work schedules and opportunities of Delta flight attendants who worked for Delta prior to the Northwest merger—and to do so even though the post-merger flight attendant representation issues have not been resolved by the National Mediation Board (“NMB”) under Section 2, Ninth, of the Railway Labor Act (“RLA”), 45 U.S.C. § 152 (Ninth)—the Scope Clause Grievance raises, implicates, and is inextricably intertwined with a “representation dispute” within the exclusive jurisdiction of the NMB. As such, the AFA’s Scope Clause Grievance is not subject to the grievance process and arbitration jurisdiction of the System Board of Adjustment as established in Sections 27 and 28 of the pre-merger Northwest-AFA collective bargaining agreement (the “System Board Procedure”), and the declaratory and injunctive relief requested by Delta in this Complaint should be granted. *See Global Aero Logistics Inc. v. Air Line Pilots Ass’n*, No. 08-1845, 2008 U.S. Dist. Lexis 46621, at *16 (E.D.N.Y. June 17, 2008) (Gleeson, J.); *Indep. Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 664 F. Supp. 156, 158-60 (S.D.N.Y. 1987), *aff’d*, 836 F.2d 130 (2d Cir. 1988); *Flight Eng’rs’ Int’l Ass’n v. Pan Am. World Airways, Inc.*, 716 F. Supp. 110, 113-15 (S.D.N.Y. 1989), *aff’d*, 896 F.2d 672 (2d Cir. 1990).

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction to issue the relief requested herein: (a) under 28 U.S.C. § 1331, because this case is a civil action arising under the laws of the United States, namely, the RLA, 45 U.S.C. §§ 151 *et seq.*; and (b) under 28 U.S.C. § 1337, because this case is a civil action arising under an Act of Congress regulating commerce, namely, the RLA. The declaratory and injunctive relief requested herein are further authorized by 28 U.S.C. §§ 2201(a) and 2202, respectively. However, neither this Court nor an arbitration tribunal under the RLA has jurisdiction to adjudicate the merits of the underlying claim raised by the AFA's Scope Clause Grievance.

4. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), because the AFA represents flight attendants who are based in this District and therefore does business and resides in this District. In addition, Delta conducts substantial airline operations in this District, at LaGuardia Airport and John F. Kennedy International Airport, and maintains a flight attendant base in this District.

PARTIES

5. Plaintiff Delta is a certificated air carrier engaged primarily in the transportation of persons and property in interstate and international commerce. 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. As a result of its acquisition of Northwest on October 29, 2008, Delta became the largest passenger airline in the world. Delta currently has more than 20,000 U.S.-based flight attendants.

6. Defendant 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's principal place of business is in Washington, D.C. AFA operates as a division of another large labor union, the Communications Workers of America. Prior to Delta's acquisition of Northwest, the AFA was certified by the NMB to be the collective bargaining representative of the flight attendants employed by Northwest. The AFA has never been certified by the NMB to represent flight attendants employed by Delta. In fact, Delta flight attendants have twice rejected efforts by the AFA to become their union representative.

FACTUAL BACKGROUND

Representation Disputes Under The RLA

7. Section 2, Fourth of the RLA, 45 U.S.C. § 152, Fourth, provides, *inter alia*, that “[t]he majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for purposes of this chapter.” The NMB has long interpreted this statutory language to require system-wide representation for each craft or class of a carrier's employees. *See, e.g., LSG Lufthansa Servs., Inc.*, 25 N.M.B. 96, 108 (1997) (“The Board's longstanding practice is to conduct elections across a carrier's entire system. . . . Crafts or classes include all of the employees working in the classification deemed eligible, regardless of work locations.”). For example, all of an airline's flight attendants throughout the United States would comprise one unit for collective bargaining purposes, and the NMB would not conduct a representation election or certify a collective bargaining representative for only a portion of an airline's flight attendants.

8. Section 2, Ninth, of the RLA, 45 U.S.C. § 152, Ninth, provides, in pertinent part, as follows:

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier.

Section 2, Ninth, vests exclusive jurisdiction over representation disputes in the NMB.

Switchmen's Union v. Nat'l Mediation Bd., 320 U.S. 297 (1943).

9. The NMB's exclusive jurisdiction over representation disputes encompasses disputes flowing from mergers and other transactions between two carriers. This exclusive jurisdiction includes not only disputes over whether a union represents a system-wide craft or class of employees following a merger, *see W. Airlines, Inc. v. Int'l Bhd. of Teamsters*, 480 U.S. 1301, 1302 (1987) (O'Connor, J.), but also post-merger disputes, such as the AFA's Scope Clause Grievance, regarding assignment of work responsibilities between groups of employees even where a union is not seeking an extension of its representation certification. *See Flight Eng'rs' Int'l Ass'n v. Pan Am. World Airways, Inc.*, 896 F.2d 672, 674 (2d Cir. 1990) (affirming dismissal of union's lawsuit to compel arbitration of scope clause grievance; stating that "the NMB 'must have the opportunity to define how, and by whom, groups of employees in this airline merger situation are to be represented;' only after the NMB's determination 'may the union and the employer, or their arbitrator, establish or interpret contractual working conditions.'") (citation omitted); *Indep. Union of Flight Attendants*, 664 F. Supp. at 158 (same; stating that "a dispute may be considered representational, even if it does 'not arise between two rival representatives. It is enough that there is one claimant and employees who are or who may be either hostile or indifferent.'") (citations omitted); and *Global Aero Logistics Inc.*, 2008 U.S.

Dist. Lexis 46621, at *16 (granting carriers' motion to enjoin union's prosecution of scope clause grievances; explaining that "[i]f the System Board were to decide [the union's] grievances in [the union's] favor, the work schedules and opportunities of the [other airlines'] pilots would be affected," and therefore "the grievances implicate those pilots' representation rights.").

10. The NMB has established procedures for the resolution of representation disputes which arise in the context of airline mergers. Under those procedures, and based on one D.C. Circuit decision, the carrier/employer is not permitted to initiate representation dispute proceedings before the NMB; only unions or employees may do so. *See Ry. Labor Executives Ass'n v. Nat'l Mediation Bd.*, 29 F.3d 655, 662 (D.C. Cir. 1994) (*en banc*).

11. On July 27, 2009, the AFA filed an application with the NMB to represent the combined post-merger group of Delta flight attendants. By that application, the AFA asserted that, as a result of the Delta-Northwest merger, (a) Delta and Northwest constituted a single transportation system for union representation purposes under the RLA, and (b) a dispute existed over the post-merger representation of the combined flight attendant craft or class. The AFA subsequently withdrew its representation application on November 3, 2009, but did not disavow the factual assertions contained in its prior filing with the NMB. AFA's President stated at the time that the AFA intended to re-file its representation application after the NMB made proposed changes to its rules for representation elections that are perceived by the AFA to be favorable to its organizing efforts.

12. Accordingly, to date there has been no resolution of the flight attendant representation issues which have arisen from the Delta/Northwest merger—the representation controversy remains pending for resolution by the NMB pursuant to Section 2, Ninth, of the RLA.

Delta's Merger And Operational Integration With Northwest

13. On or about April 14, 2008, Delta announced its agreement to acquire Northwest and to merge Northwest into Delta.

14. Shortly thereafter, in June 2008, Delta negotiated a combined pilot collective bargaining agreement with the Air Line Pilots Association ("ALPA") that was to be applicable to the pre-merger Delta and pre-merger Northwest pilots as a joint, post-merger work group upon the closing of the Delta/Northwest acquisition. The agreement between Delta and ALPA included a process for obtaining and implementing a combined seniority list of all pre-merger Delta and pre-merger Northwest pilots, a combined pay and benefits structure, and a combined set of work rules. Because of regulatory requirements, however, the joint collective bargaining agreement provided for separate pilot flying—i.e., pre-merger Delta aircraft would be flown only by pre-merger Delta pilots and pre-merger Northwest aircraft would be flown only by pre-merger Northwest pilots—until a single operating certificate was issued by the Federal Aviation Administration ("FAA").

15. Delta's acquisition of Northwest was completed on October 29, 2008, and the combined pilot collective bargaining agreement became effective on October 30, 2008. Once the combined collective bargaining agreement became effective, the pre-merger labor agreement between Northwest and ALPA terminated. Shortly thereafter, the post-merger combined Delta pilots system seniority list became effective, and the pre-merger Northwest Airlines, Inc. pilots system seniority list terminated.

16. Subsequent to Delta's acquisition of Northwest, and consistent with its publicly-announced plans, Delta took a variety of measures to integrate the previously-separate airline operations of Northwest and Delta. These measures included painting the substantial majority of

pre-merger Northwest aircraft with the Delta livery, standardizing employee uniforms, merging Northwest's passenger reservations system and airport computer systems into Delta's, integrating pre-merger Northwest and pre-merger Delta aircraft mechanics and other groups of ground employees, merging Northwest's and Delta's frequent flyer programs, merging pilot scheduling systems, and using an integrated set of customer service procedures.

17. As a result of the successful completion of a detailed and time-consuming process to combine FAA-regulated operating functions and processes, the FAA issued a single operating certificate to Delta on December 31, 2009. That certificate transferred to Delta the entire authority to conduct airline flight operations which had previously been conducted by Northwest. On the same date, Northwest Airlines, Inc. ceased to exist as a legal entity and as an operating airline. There are no longer any flights that are operated by Northwest Airlines, no longer any flights that carry the former Northwest airline designator code ("NW"), no longer any flights or passengers identifiable as those of Northwest Airlines, and no longer any Northwest pilots or other Northwest employees. Upon issuance of the single operating certificate, and as provided for in the combined pilot collective bargaining agreement, Delta began to integrate the pilots and aircraft of the two pre-merger carriers, utilizing the single combined pilot seniority list for bidding and work assignments.

18. In December 2009, Delta posted a combined pilot vacancy bid in connection with Delta's 2010 summer schedule. In accordance with Delta's combined pilot collective bargaining agreement, this vacancy bid allowed any pilot to bid for and be awarded any position based on the pilot's placement on the combined, post-merger Delta pilot seniority list, subject to limitations on the award of positions in the B-777 and B-747 aircraft categories. This initial vacancy bid resulted in a total of 1,971 awards, including 253 pre-merger Northwest pilots who

were awarded positions in what had been pre-merger Delta aircraft categories and 277 pre-merger Delta pilots who were awarded positions in what had been pre-merger Northwest aircraft categories. The training for the positions awarded to pilots from this vacancy bid began in January 2010 and is scheduled to continue through November. More than 250 pilots already have moved into new positions as a result of the vacancy bid awards. By May 1, 2010 more than 1000 pilots will have completed training and moved into new positions. The first commingled pilot crew, i.e., a crew consisting of one pre-merger Delta pilot and one pre-merger Northwest pilot, flew on March 2, 2010. As a result of the bid award under the combined pilot labor agreement, there will be increasing numbers of commingled pilot crews going forward.

19. Delta has also taken substantial measures to integrate the pre-merger Northwest and pre-merger Delta flight attendants. For example, pre-merger Northwest flight attendants began wearing Delta uniforms on or about March 31, 2009, and the majority of in-flight passenger services have been harmonized to Delta standards and procedures, with completion scheduled for May 1. In August 2009, Delta began a major initiative to cross-train flight attendants on the safety features of all aircraft in the combined fleet, in order to qualify all post-merger flight attendants under FAA regulations to serve on all aircraft in Delta's combined fleet. That cross-training is scheduled to be substantially completed in March 2010. However, pending the resolution by the NMB of post-merger representation issues, the pre-merger Northwest flight attendants continue to work under the separate wages, benefits, work rules, seniority list, and bidding procedures contained in the pre-merger Northwest-AFA collective bargaining agreement. As a result, the pre-merger Northwest flight attendants are assigned only to work with other pre-merger Northwest flight attendants; they are not commingled with pre-merger

Delta flight attendants, although the pilots on some of their flights may now be pre-merger Delta pilots.

AFA's Scope Clause Grievance Raises Representation Issues

20. Section 1 of the pre-merger Northwest-AFA collective bargaining agreement is entitled "Recognition, Scope and Job Security." Section 1.A., *inter alia*, defines the "Company" as "Northwest Airlines, Inc.," and Section 1.B.2.a provides in pertinent part that "[a]ll 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. . . ."

21. On March 4, 2010, the AFA filed the Scope Clause Grievance, seeking as relief, *inter alia*, "[t]hat the Company shall cease and desist the integration of all flight crews [i.e., pilots] and restore the status quo ante (that the Company shall schedule only pre-merger NW flight attendants to work on aircraft flown only by pre-merger NW pilots)." (Second parenthetical in original.) (A copy of the AFA's Scope Clause Grievance is attached hereto as Exhibit A.) On March 5, 2010, the AFA followed up the filing of its Scope Clause Grievance with a demand for expedited arbitration. (A copy of the AFA's demand is attached hereto as Exhibit B.) Delta's response to the AFA's demand, setting forth its position (as stated herein) that the Scope Clause Grievance is not subject to resolution through the System Board Procedure, will be sent to the AFA on March 12, 2010. (A copy of Delta's response is attached hereto as Exhibit C.)

22. The relief which the AFA seeks in the Scope Clause Grievance would directly impact the work schedules and opportunities of all post-merger Delta flight attendants despite the

fact that the AFA has never represented any of the current Delta flight attendants who worked for Delta prior to the merger and who constitute approximately 65% of the combined post-merger Delta flight attendant workforce.

23. With the start of Delta's summer flight schedule, some aircraft previously staffed by pre-merger Northwest flight attendants will be staffed from flight attendant bases populated by pre-merger Delta flight attendants, and vice versa. These adjustments will not have an adverse impact on the amount of flying available to pre-merger Northwest flight attendants. Under the remedy proposed by the AFA in the Scope Clause Grievance, pre-merger Delta flight attendants will be denied work opportunities on flights that would otherwise be available to them in the ordinary course of their work in connection with Delta's upcoming summer schedule. In addition, Delta would be required to involuntarily transfer hundreds of flight attendants, including pre-merger Delta flight attendants, to other flight attendant bases throughout the United States in order to staff the summer flights because many flight attendants would not be allowed under the AFA's proposed remedy to work on the flights that are most convenient to where they are based. Delta also likely would be required to "deadhead" a far greater number of flight attendants, including pre-merger Delta flight attendants, from their current bases to position them for flights operating out of other bases than would otherwise be required. If it did so, then flight attendants (including pre-merger Delta flight attendants) in many cases could receive less compensation and have more inconvenient work schedules than if they worked on flights originating from their bases.

24. The relief sought by the AFA in the Scope Clause Grievance would also have a major impact on Delta's pilots, who are not represented by the AFA but rather by ALPA. There is no Pilot System Seniority List of Northwest Airlines, Inc. There is only a post-merger

combined Delta pilots system seniority list. Even if Delta somehow could “restore the status quo ante” (which it could not do) and staff pre-merger Northwest aircraft only with pre-merger Northwest pilots, as the AFA’s Scope Clause Grievance requests, that would require Delta to violate its pilot collective bargaining agreement with ALPA. As noted in Paragraph 18 above, pilots already have bid for and been awarded vacancies, which is their right under the pilot labor contract based on their position on the combined pilot seniority list. The pilot contract does not permit Delta to rescind the numerous position changes that have occurred under the vacancy bid. Similarly, any attempt to re-bid the vacancy awards would have to honor pilots’ choices of aircraft categories and positions consistent with their place on the combined seniority list. It would not be possible to preclude pre-merger Northwest pilots from bidding for and being awarded positions that would result in their being commingled with pre-merger Delta pilots without violating the combined, post-merger pilot labor contract. Even if this somehow could be done without violating the pilot contract (which it cannot), even attempting to make such changes would prevent implementation of Delta’s summer flight schedule—a schedule which already has been published, marketed, and sold to the traveling public.

CLAIM FOR RELIEF

(Declaratory and Injunctive Relief

Section 2, First, Of The RLA, 45 U.S.C. § 152, First, 28 U.S.C. §§ 2201, 2202)

25. Delta repeats and realleges Paragraphs 1 through 24 of this Complaint as though fully set forth herein.

26. The issues which the AFA seeks to resolve in the Scope Clause Grievance are *inextricably intertwined with and implicate representation issues* within the exclusive jurisdiction of the NMB and beyond the jurisdiction of the System Board Procedure. The AFA’s efforts to pursue the Scope Clause Grievance through the System Board Procedure would conflict with the

exclusive jurisdiction of the NMB over representation issues, in contravention of Section 2, Ninth, of the RLA.

27. By failing to utilize the statutory mechanism for resolving the representation issues implicated by its Scope Clause Grievance, i.e., recourse to the NMB, and seeking instead to adjudicate the Grievance through the System Board Procedure, the AFA has failed “to exert every reasonable effort to . . . settle all disputes . . . in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof” in the manner prescribed by the RLA, 45 U.S.C. § 152 (First). Such failure may be enjoined by this Court. *See Summit Airlines, Inc. v. Teamsters Local Union No. 295*, 628 F.2d 787, 795 (2d Cir. 1980).

28. There is an actual controversy between Delta and the AFA as to whether, under the RLA, the Scope Clause Grievance may be adjudicated through the System Board Procedure. This Court therefore has jurisdiction under 28 U.S.C. § 2201(a) to “declare the rights and other relations” of Delta and AFA regarding the proper forum for resolution of the Scope Clause Grievance.

29. Pursuant to 28 U.S.C. § 2202, this Court may enjoin the AFA from further pursuing resolution of the Scope Clause Grievance through the System Board Procedure.

PRAYER FOR RELIEF

WHEREFORE, Delta prays for judgment against Defendant as follows:

A. That the Court issue a declaratory judgment that the issues raised by the Scope Clause Grievance, which the AFA has sought to pursue by means of grievance and arbitration proceedings, implicate and are inextricably intertwined with representation issues within the

exclusive jurisdiction of the NMB under Section 2, Ninth of the RLA, 45 U.S.C. § 152 (Ninth), and thus are not within the jurisdiction of the System Board Procedure under the RLA.

B. That the Court issue an injunction requiring the AFA to cease and desist from pursuing the Scope Clause Grievance through the System Board Procedure; and


C. That the Court grant such other, further, or different relief as to which Delta may be entitled or which this Court deems just and proper to ensure that the AFA will comply with its statutory duties under the RLA.

Dated: New York, New York
March 12, 2010

Respectfully submitted,

O'MELVENY & MYERS LLP

By:


Robert A. Siegel

Jeffrey I. Kohn

Times Square Tower
7 Times Square
New York, New York 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2061
E-mail: rsiegel@omm.com

Attorneys for Plaintiff Delta Air Lines, Inc.