

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION OF FLIGHT)
ATTENDANTS-CWA)
501 3rd Street, NW)
Washington, D.C. 20001)
)
and)
)
MARIANNE BICKSLER)
8722 N. Cove Drive)
Park City, UT, 84098)
)
Plaintiffs,) Civil Action No. _____
)
v.)
)
DELTA AIR LINES, INC.)
1030 Delta Boulevard)
Atlanta, Georgia 30320)
)
Defendant.)

COMPLAINT FOR DECLARATORY RELIEF

1. Plaintiffs the Association of Flight Attendants-CWA (“AFA”) and Marianne Bicksler bring this Complaint for declaratory judgment. Plaintiffs seek a declaration that efforts by Defendant Delta Air Lines, Inc. (“Delta” or “the carrier”) to initiate a seniority integration process for flight attendants employed by pre-merger Northwest Airlines, Inc. and flight attendants employed by pre-merger Delta is premature and constitutes unlawful interference with the rights of those employees to choose their representative and to organize and bargain collectively through that representative without interference, influence, or coercion by Defendant.

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 Railway Labor Act, 45 U.S.C. §§ 155-188, a federal statute regulating interstate commerce, and Public Law 110-161, Div. K, Title I, § 117 . This Court may grant declaratory judgment with respect to the rights of the parties pursuant to 28 U.S.C. §§ 1651 and 2201.

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 with a principal place of business in Washington D.C., 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. 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. Plaintiff Marianne Bicksler is a flight attendant currently employed by Defendant Delta. Plaintiff is a citizen and resident of the state of Utah.

6. Defendant Delta is a Delaware corporation and air carrier maintaining its business headquarters at 1030 Delta Boulevard, Atlanta, Georgia 30320-6001. Delta acquired Northwest through a merger which closed on October 29, 2008; however Northwest continues to operate as an separate carrier.

7. Defendant Delta is a carrier within the meaning of Section 201 of the RLA, 45 U.S.C. § 181. Northwest, Delta's wholly owned subsidiary, is also a carrier for purposes of the RLA.

STATEMENT OF FACTS

8. Under the Section 2, Ninth of the RLA, the National Mediation Board ("NMB" or "Board") is given the authority to investigate representation disputes among a carrier's employees upon the request of those employees. 45 U.S.C. § 152, Ninth. Following investigation, the Board certifies the employees' designated bargaining representative.

9. As a corollary to the Board's Section 2, Ninth authority, it is empowered to decide representation disputes arising out of mergers upon the request of the employees of the merged carriers. However, before any such dispute may be resolved, the Board must first await application by the employees (or their representative) of a particular craft or class seeking a determination that the merged entity constitutes a single air carrier for purposes of the RLA. After an application is made, the NMB conducts an investigation to determine whether the indicia of a single carrier are present. Once the NMB makes a finding that a single carrier exists for that particular craft or class, it may conduct a representation election to determine the employees' designated bargaining representative.

10. The NMB considers a number of factors in determining whether a single carrier exists, including whether the carriers have combined their operations from a managerial and labor relations perspective; whether a combined schedule has been published; how the carriers advertise their services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; whether signs, logos, and other publicly visible indicia have been changed to indicate only one carrier's existence; and whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has progressed.

11. AFA has served as the certified bargaining representative for the craft or class of flight attendants employed by Northwest since July 2006. The craft or class of flight attendants employed by Delta is currently unrepresented.

12. On or about April 14, 2008, Northwest and Delta reached an agreement to merge, with Delta agreeing to acquire Northwest.

13. On October 29, 2008, Delta acquired all of the ownership interests in Northwest.

14. Delta has asserted that it may take up to 12 to 24 months to fully merge the operations of the two carriers, a process which includes obtaining a single operating certificate from the Federal Aviation Administration, and combining reservation and scheduling systems, as well as fleets and work forces.

15. On November 11, 2008, AFA received a letter from Michael H. Campbell, Delta's Executive Vice President of Human Resource & Labor Relations seeking to initiate a seniority integration process for the flight attendant groups from Delta and Northwest in order to "accelerate the key decisions and milestones needed for a smooth, successful integration." *See* Ex. A, attached hereto.

16. In his letter, Mr. Campbell referenced "the recently enacted federal law which requires the fair and equitable integration of seniority lists when two airlines combine and the combining groups have different representation status." *See id.*

17. The law referenced by Mr. Campbell states, in relevant part, "[w]ith respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act, sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger shall apply to the integration of covered employees of the covered air carriers." Pub. L. 110-161, Div. K, Title I, § 117 (Dec. 26, 2007).

18. In his November 11, 2008 letter, Mr. Campbell further advised that the pre-merger Delta flight attendants are now in the process of voting on 14 representatives who will compose a seniority integration committee. He asserted that Delta expected that the Delta flight attendant committee would be prepared to have an initial meeting with the representatives of the pre-merger Northwest flight attendants and the carrier in the week of December 1, for the purpose of determining a process and timeline for reviewing and analyzing seniority data and for seeking agreement on how seniority lists should be combined.

19. Delta initiated, organized and sponsored the election of the Delta seniority integration committee. Additionally, Delta is financing the costs of the committee, including compensation for flight attendants elected to the committee.

20. It is AFA's position that a single carrier does not exist with regard to the newly merged carriers. Accordingly, AFA has not filed an application seeking a single carrier determination from the NMB.

COUNT I
(RLA Section 2, Third)

21. Plaintiffs incorporate the allegations of paragraphs 1 through 20, inclusive, as if fully set forth herein.

22. Section 2, Third of the RLA provides, in relevant part, that “[r]epresentatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other, and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives.” 45 U.S.C. § 152, Third.

23. The process of seniority integration in the event of a merger directly affects the wages and other benefits of workers. The RLA determines the rights, obligations and duties

of employees, their representatives, and carriers with respect to negotiations and agreements concerning central aspects of employment. 45 U.S.C. § 152, First.

24. Delta's efforts to initiate the seniority integration process and, in essence, select the employees' representatives for the purposes of that process, prior to an NMB finding that a single carrier exists and a representation election to determine the bargaining representative for the combined flight attendant workforce constitutes interference with the employees' choice of representative in violation of Section 2, Third of the RLA, 45 U.S.C. § 152, Third.

COUNT II
(RLA Section 2, Fourth)

25. Plaintiffs incorporate the allegations of paragraphs 1 through 24, inclusive, as if fully set forth herein.

26. Section 2, Fourth of the RLA provides, in relevant part, 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 the purposes of [the RLA]. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees . . . or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization." 45 U.S.C. § 152, Fourth.

27. Unless and until the NMB makes a finding that a single carrier exists for the craft or class of flight attendants and certifies AFA as the bargaining representative for the combined craft or class, AFA is statutorily obligated to represent only the interests of pre-merger Northwest flight attendants in the seniority integration process.

28. By initiating the seniority integration process prior to NMB resolution of the representation matter, Delta seeks to force AFA to take a position which may benefit pre-merger Northwest flight attendants to the detriment of the unrepresented Delta workforce and thereby influence the unrepresented Delta flight attendants in an effort to induce them to not vote for AFA in the event of a representation dispute. Such action constitutes unlawful interference with and influence over the choice of its employees' bargaining representative, in violation of Section 2, Fourth of the RLA, 45 U.S.C. § 152, Fourth.

COUNT III
(Public Law 110-161, Div. K, Title I, § 117)

29. Plaintiffs incorporate the allegations of paragraphs 1 through 28, inclusive, as if fully set forth herein.

30. Public Law 110-161, Div. K, Title I, § 117 ("seniority integration statute") states in relevant part, "[w]ith respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act, sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger shall apply to the integration of covered employees of the covered air carriers." Pub. L. 110-161, Div. K, Title I, § 117 (Dec. 26, 2007).

31. The seniority integration statute defines a "covered transaction" as "a transaction for the combination of multiple air carriers into a single air carrier." Pub. L. 110-161, Div. K, Title I, § 117 (Dec. 26, 2007).

32. Read together and in harmony with the RLA, these provisions clearly contemplate that operation of the seniority integration statute is triggered by an NMB finding that the merged carriers constitute a single air carrier for that craft or class. Here, AFA has

not filed an application for such a finding with the Board, because no indicia of a single carrier exists for the craft or class of flight attendants.

33. Furthermore, under the statute, the method by which seniority integration will be accomplished is dependent upon the outcome of a representation election for the affected craft or class. If an election results in a representative with internal policies regarding seniority integration, then those internal policies will apply; otherwise, seniority integration must be resolved through either collective bargaining or binding arbitration between the carriers and the representatives of the employees affected. Pub. L. 110-161, Div. K, Title I, § 117 (Dec. 26, 2007).

34. Delta's efforts to initiate seniority integration proceedings prior to both an NMB finding that a single air carrier exists and a representation election is in direct contravention to the terms of the seniority integration statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief:

A. Enter a judgment declaring that efforts by Defendant Delta to initiate a seniority integration process for flight attendants employed by pre-merger Northwest and flight attendants employed by pre-merger Delta is premature and constitutes unlawful interference with the rights of those employees to choose their representative and to organize and bargain collectively through that representative without interference, influence, or coercion by Defendant;

B. Enter an order granting Plaintiffs injunctive relief compelling Defendant to cease from interfering with, restraining, and denying the exercise of rights provided under the RLA;

C. Enter an order awarding Plaintiffs their attorneys' fees and other costs associated with this action;

D. Enter an order granting further relief as the Court may deem proper.

Respectfully submitted,

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Dated: November ___, 2008

Counsel for Plaintiffs