UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS DISTRICT LODGE 141-M;	)	Case No. 03 Judge Magistrate
Plaintiffs,	)	
v.	)	
USAIRWAYS, INC., Defendant.	)	

COMPLAINT UNDER RAILWAY LABOR ACT FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, DAMAGES AND RELATED RELIEF

Come now the International Association of Machinists and Aerospace Workers, and International Association of Machinists and Aerospace Workers District Lodge 141-M, through undersigned counsel, who allege as follows:

NATURE OF ACTION

1 This is an action seeking injunctive relief, declaratory judgment, damages, and related relief due to a major dispute under the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151-188, due to the irreparable harm caused by Defendant to

be inflicted upon the Union and the employees it represents, and to obtain relief against Defendant for its violations of its obligations to treat with the representatives of its employees under the RLA.

JURISDICTION

2. This Court has jurisdiction of this action under 28 U.S.C. §§ 157, 1331, 1334, 1337, 2201 and 2202. The matter in controversy exceeds the sum and value of seventy-five thousand dollars ($75,000) exclusive of interest and costs.

PARTIES AND VENUE

3. Plaintiff International Association of Machinists and Aerospace Workers ("the Union"), is an unincorporated association organized for the purpose and objective of acting as a "representative" labor organization within the meaning of Section 1, Sixth, of the RLA, 45 U.S.C. §151, Sixth. At all relevant times to the matters complained of herein, the Union has been and is the certified representative of the craft or class of mechanics and related employees working for Defendant USAirways, Inc. ("The Company"). Venue is proper in this district because Plaintiff Union, District Lodge 141-M and Defendant Company all do substantial business within this District, including substantial maintenance work on aircraft

flown by the company. The Company maintains an operational and maintenance hub in this District, employing thousands of people and impacting the jobs of thousands of others not employed by the Company.

4. Plaintiff International Association of Machinists and Aerospace Workers, District Lodge 141-M ("District Lodge 141-M"), is an unincorporated association organized for the purpose and objective of acting as a "representative labor organization within the meaning of Section 1, Sixth, of the RLA, 45 U.S.C. §151, Sixth. At all relevant times to the matters complained of herein, District Lodge 141-M has been the designated representative of the Mechanics and Related class and craft of employees at US Airways, assigned by the Union to engage in representative duties such as engaging in collective bargaining, enforcement of the parties' collective bargaining agreement, and grievance handling.

5. Defendant US Airways, Inc. is a common carrier by air within the meaning of Section 201 of the RLA, 45 U.S.C. §181.

STATEMENT OF FACTS

6. The Union and the Company have been parties to a series of collective

bargaining agreements ("CBA's"), the current, operative one not amendable until December 31, 2008. A true and correct copy of relevant excerpts of that collective bargaining agreement is attached to this Complaint as Exhibit A.

7. Article 2 of the CBA provides that employees of the Company represented by the Union shall perform all of the following work:

> "the making, assembling, erecting, dismantling, and repairing of all machinery, mechanical equipment, engines and motors of all description, including all work involved in dismantling, overhauling, repairing, fabricating, assembling, welding, and erecting all parts of airplanes, airplane engines, avionics equipment, electrical system, heating system, hydraulic system, and machine tool work in connection therewith, including all maintenance, construction and inspection work in and around all shops, hangars, buildings, and including the servicing, cleaning and polishing of airplanes and parts thereof, and the servicing and handling of all ground equipment performed in and about Company

shops, Maintenance bases, Aircraft Base Maintenance bases, and Line service stations."

8. The CBA also provides:

a. "As a clarification of Article 2 (Scope of Agreement) of the Agreement between USAirways, Inc., and the International Association of Machinists and Aerospace Workers, it is agreed that:"

i. Section (B) of said Article 2 is recognized by both parties as prohibiting the "farming out" of the types of work specified in said Section (B).

ii. The intent of said Section (B) is that the types of work specified therein (and in Article 4 of the aforementioned Agreement) shall be accomplished by the employees of USAirways, Inc., described in the said Article 4.

iii. The preceding clarification shall apply to the aforementioned Agreement, and any and all supplements thereto or modifications thereof reached under the Railway Labor Act, as amended, and shall be and remain in effect until modified by mutual agreement or until a

contradictory renegotiated Article 2 of the aforementioned Agreement is made effective, whichever occurs first.

9. The only exceptions to the above exclusive coverage of the parties' Agreement prohibiting subcontracting of all work covered by the Agreement are listed in a "Clarification of Article 2(B)" provision, which states in relevant part that "(i)t is not the Company's intent to perform scheduled maintenance at locations other than USAirways maintenance bases", and that the Company may have work performed by non-USAirways employees only in the following instances relevant to the circumstances impelling this Complaint:

(E) Major construction or installation of new facilities, equipment, or machinery when employees of the Company are incapable, from the standpoint of skill or equipment, of performing the work.

* *

(G) Types of work customarily contracted out, such as parts and material which the Company could not be expected to manufacture, such as engine

> and airframe parts, castings, cowlings, seats, wheels and other items which are commonly manufactured as standard items for the trade by vendors. Work subcontracted out to a vendor will be of the type that cannot be manufactured or repaired in-house by existing skills/equipment or facilities of the Company.

10. Since the parties began their collective bargaining relationship, the Company has *never* subcontracted heavy airframe maintenance work (in connection with Airbus aircraft, also referred to as an "S-check") on its fleet. IAM-represented employees of the Company have performed, and currently perform, heavy maintenance on all of USAirways' Boeing 737-300's, 737-400's, 757's, and 767's at USAirways maintenance facilities in Pittsburgh and Charlotte, North Carolina.

11. Since USAirways first acquired Airbus aircraft five years ago, the Company has employed its IAM-represented mechanics to perform all required maintenance on its fleet of Airbus A-320's, including all A-, B- and C-checks that have been performed to date, at facilities in its possession and control. The tooling and equipment necessary to perform "S-

checks" is the same as that required to perform "C-checks". The Company performs the maintenance on its Airbus fleet at its maintenance bases in Pittsburgh, Pennsylvania and Charlotte, North Carolina, employing IAM-represented employees to perform the work in accordance with the CBA, and has the hangar space, tools, equipment and facilities available to perform "S-checks" on its Airbus fleet as well, including the mechanical skills required of mechanics performing "S-checks" on those aircraft.

12. In collective bargaining negotiations between the Union and the Company in 1999, the Company recognized that it did not have the right to subcontract airframe heavy maintenance work, and it sought to obtain that subcontracting right from the IAM in the negotiations by proposing that it be allowed to subcontract heavy maintenance on equipment then in need of such service. The Union rejected the Company’s proposal to obtain that right to subcontract airframe heavy maintenance work.

13. Despite the clear prohibition in the CBA against subcontracting of A-320 airframe maintenance work, the lack of any practice or precedent supporting such subcontracting, and the Company's recognition through bargaining conduct that it has no right to subcontract such work, on or prior to August

4, 2003, the Company announced that it was going to subcontract A-320 airframe heavy maintenance work. In response to that announcement, Robert Roach, the IAM's General Vice President for Transportation, wrote to President and Chief Executive Officer David N. Siegel to confirm that

> (a)ny attempt to subcontract this work, which falls under the jurisdiction of the IAM-USAirways Agreement, shall be considered a major dispute under the Railway Labor Act. The IAM will take whatever measures are necessary to protect any and all work that should be performed by IAM-represented mechanics at USAirways. As a major dispute, this will include, but is not limited to, seeking a Temporary Restraining Order, injunctive relief, withdrawing our services as provided by law, and/or whatever other legal action may be necessary.

Vice President Roach "recommended" that "your management personnel cease and desist from any further discussions related tot he farm out of work that clearly falls under the jurisdiction of the IAM." A true copy of the letter is attached to this Complaint as Exhibit C.

14. On August 8, 2003 the Company responded to the Union's letter, asserting that there was an arbitrable dispute

about the interpretation of the Scope Clause of the CBA, but without offering any interpretation of that clause whatsoever, let alone one that would even arguably justify the completely unprecedented subcontracting of airframe heavy maintenance work. The letter also stated that "the Company has not decided how it will handle upcoming heavy maintenance of the Airbus fleet." A true copy of the Company's letter is attached to this Complaint as Exhibit D.

15. On August 25, 2003, the Union noted that in light of the Company's statement that it had made no decision about how to handle Airbus heavy maintenance, the Union would take no action presently. However, the Union reiterated that it would take "all necessary and legal action to ensure that USAirways does not violate the Railway Labor Act, as amended." A true copy of this letter is attached to the complaint as Exhibit E.

16. On October 6, 2003, the Company advised the IAM that it was sending ten Airbus aircraft to Singapore Technologies Mobile Aerospace Engineering, a subcontractor located in Mobile, Alabama and a vendor not covered by the parties' Agreement, to perform heavy airframe maintenance work on Airbus equipment owned and operated by the Company. The company stated that the first such aircraft would arrive in Alabama on October 7. The second aircraft would arrive in Mobile on October 21 to be followed at one-week intervals by the remaining eight Airbus aircraft. The Company further advised the Union that six IAM-represented employees would be sent to Alabama to train the subcontractor’s employees in USAirways’ practices and procedures for performing heavy maintenance work on the Airbus, including gaining familiarity with the Airbus maintenance manual and related FAA guidelines. Two additional IAM-represented employees would be sent to Mobile to perform quality assurance work in connection with the subcontracting.

17. There is no arguably justifiable basis in the CBA language, or the parties' historical practices that lends any support for USAirways ' intended subcontracting of the A-320 heavy maintenance work. Any claim by the Company that it has a contractual or "custom and practice" defense for its subcontracting plan would be frivolous and obviously insubstantial.

18. As of the date of filing of this action, and despite further express warnings to Company management that the Union would file this suit, the Company has failed and refused to agree to relent on its announced intention to violate the clear prohibition of the CBA against subcontracting A-320 airframe heavy maintenance work, and has taken certain affirmative steps, including entering into contracts and moving aircraft, to engage in subcontracting of that work.

FIRST CAUSE OF ACTION; VIOLATION OF THE STATUS QUO; MAJOR DISPUTE

19. The actions described in paragraphs 6 through 18 above are intended by the Company to unilaterally create new, unprecedented terms of a collective bargaining agreement, rules and working conditions that have no justification or

support whatsoever in the operative collective bargaining agreement or the status quo derived therefrom, and are obviously insubstantial, spurious and frivolous

20. Under the terms of Section 152, First, Second, Third, and Seventh of the RLA, Defendant Company has the obligation to not alter rates of pay, rules, or working conditions during the term of a collective bargaining agreement.

21. Defendant's threatened imminent and actual conduct as set forth above, and in particular paragraphs 13 and 16 of this Complaint, constitutes a violation by Defendant of its obligations under 45 U.S.C. §§152, 155, 156, 157 and 160 together with related provisions of Sections 2, 5 and 6 and Title 2 of the Act.

22. The Union and the mechanics and related employees represented by the Union possess valuable rights under the Act, which have been and continue to be jeopardized, nullified and otherwise adversely affected by Defendant's conduct in violation of the Act, by its continuance of such conduct, and by its failure to rectify such conduct absent court order.

23. The Union need not demonstrate irreparable harm to obtain an injunction against the Company for its violation of the Railway Labor Act. Nevertheless, Defendant's conduct as

alleged above, has caused and will continue to cause substantial and irreparable damage and injury to the Union and mechanics and related employees represented by the Union. If the Company is not prevented from violating the CBA by subcontracting the A-320 heavy maintenance work, mechanics and their families who now perform heavy maintenance work will be displaced and face the jeopardy of unemployment, and other laid off mechanics on the recall list will be wrongfully denied their right to receive recall to perform such work.

Moreover, the general public living and working in this District will be irreparably harmed if the Company is not enjoined from subcontracting the Airbus work, since related jobs and business in and around the Pittsburgh airport and other areas accompanying such work will depart from the area of this District.

24. Defendant, unless enjoined, will continue to engage in the course of conduct it has embarked upon in violation of the Act as set forth above.

25. Neither the Union nor the mechanics and related employees it represents have an adequate remedy at law for the violations of the RLA set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a temporary, a preliminary, and a permanent injunction to be made and entered upon the conclusion of the trial of this action, directing and ordering the Company, its officers, employees, and agents to immediately halt all efforts, including communications, contracting, training, and negotiations, and physical actions, intended to result, or reasonably likely to result, in the subcontracting of A-320 airframe heavy maintenance work, or any other maintenance work currently being performed by the Company with employees covered by the parties' CBA,

2. For a judgment, to be made and entered upon the conclusion of a trial in this action, declaring the rights and obligations of the parties.

3. For a judgment that damages be awarded to both the Union and the mechanics and related employees it represents,

in a sum to be determined and entered upon the conclusion of the trial of this action, as compensation for the wrongful conduct of the Company, and for punitive damages.

4. For the costs and reasonable attorneys' fees incurred in bringing this action.

5. For such other and further relief as this Court determines to be just and proper.

DATED: October 6, 2003

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VERIFICATION

I, Scotty Ford, the undersigned, declare:

I am the President and General Chairman of the IAMAW District Lodge 141-M ("District 141-M"), and I am authorized to make verification for and on its behalf and on behalf of the IAMAW, and I make this verification for that reason. I have read the foregoing Complaint under Railway Labor Act for Injunctive Relief, Declaratory Judgment, Damages and Related Relief and know its contents. The matters stated therein are true of my own knowledge except as to such matters stated on belief, and as to such matters I believe them to be true, and if called as a witness I would so competently testify.

I swear under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

Dated this sixth(6^{th}) day of October , 2003 in Pittsburgh, Pennsylvania.

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Scotty Ford